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Since the 1954 Supreme Court desegregation case, small communities in southern and western parts of Texas voluntarily desegregated their small numbers of Negroes into the white schools, principally for financial reasons. The large cities began to desegregate also. Despite the governor's intention to slow down integration, there were 60 districts open in the 1955-56 school year with biracial classes.

In the eastern parts of the State, where there is a large Negro population, desegregation has been more difficult. In 1957, an incident of community violence in Mansfield, Texas, slowed the desegregation efforts throughout the State. Not until 1962 could the efforts be resumed at a faster pace. Desegregation in East Texas still must usually be forced by litigation.

Houston, the largest city in all of the former Confederate States, is looked to for leadership in public school desegregation. Houston began integration with ease in 1960 but has moved slowly since then. There has been a noticeable lack of Negro leadership in the struggle for nondiscriminatory education. There is still much segregation in community housing; thus a certain amount of segregation in the schools is maintained.

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# CIVIL RIGHTS U.S.A.

## Public Schools

## Southern States

## 1963

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# TEXAS

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Staff Report Submitted To

THE UNITED STATES COMMISSION ON CIVIL RIGHTS

and Authorized for Publication

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# CIVIL RIGHTS U.S.A.

## PUBLIC SCHOOLS

## SOUTHERN STATES

## 1963

## TEXAS

By Harry K. Wright

Staff Report Submitted To

THE UNITED STATES COMMISSION ON CIVIL RIGHTS

and Authorized for Publication

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# Preface

This report is an attempt, first, to present a picture of the progress toward equal rights for Negroes in the public schools in Texas as a whole, and second, to relate in some depth the story of civil rights in the public schools in Houston, the State's largest city.

The pattern of civil rights in the Texas public schools in mid-1963 is far from consistent and varies to such an extent from section to section and from community to community that a thorough understanding of this complex problem in the State would require an examination of many of its cities and towns. Limitations of time have prevented such an undertaking. Because of its size and importance, the major part of the study has been devoted to Houston. However, special attention has also been devoted to Mansfield and Texas City, two of the State's smaller communities, reflecting widely differing attitudes and approaches even in areas of the State having substantial Negro populations.

Most of the information reported on the State as a whole has been drawn from contemporary newspaper accounts, statute books, reports of decided law cases, and other publications. Information on the current situation in Mansfield was generously supplied by Mr. John Howard Griffin, author and lecturer on civil rights and a longtime resident of that community. For the Texas City story I am mainly indebted to Mr. John Sosnowy, president of the school board in that city. To both I am deeply grateful.

The Houston story was pieced together largely from minutes of school board meetings, newspaper reports, trial records and court decisions, and numerous interviews with members of the school board, school administrators, attorneys for the school district and the plaintiffs in the lawsuits, white and Negro patrons of the city's schools, and private citizens. Although there are doubtless many who do not share my conclusions and who will be spared the possible embarrassment of being named here, virtually all persons interviewed were generous with their time and patience and have my sincere gratitude.

Harry K. Wright

Austin, Texas

July 15, 1963

# Contents

Page

Preface. . . . . . . . . . . . . . . . . . . . . . . . iii

Introduction . . . . . . . . . . . . . . . . . . . . . . i

Initial Reaction: 1954 - 1957 . . . . . . . . . . . . . 3

  Segregation Laws in the State Courts . . . . . . . . . 5
  Mansfield. . . . . . . . . . . . . . . . . . . . . . . 7
  Hardening of the Opposition. . . . . . . . . . . . . . 10
  Resistance Legislation . . . . . . . . . . . . . . . . 12

The Pace is Slowed: 1957 - 1962 . . . . . . . . . . . . 16

  The Referendum Law Threatens . . . . . . . . . . . . . 17

The Pace Accelerates: 1962 - 1963 . . . . . . . . . . . 20

  Negotiated Plans . . . . . . . . . . . . . . . . . . . 22
  Texas City . . . . . . . . . . . . . . . . . . . . . . 22
  The Referendum Law Challenged. . . . . . . . . . . . . 25
  Expenditures on Segregated Schools . . . . . . . . . . 27

The State in 1963--General Observations. . . . . . . . . 29

Houston. . . . . . . . . . . . . . . . . . . . . . . . . 33

  Introduction . . . . . . . . . . . . . . . . . . . . . 33
  Initial Efforts: 1955 - 1960. . . . . . . . . . . . . 35
  The Plan and the Reaction. . . . . . . . . . . . . . . 50
  The Plan in Operation: Statistics and Dynamics. . . . 56
  Experiences in the Desegregated Schools. . . . . . . . 62
  Factors Influencing Desegregation. . . . . . . . . . . 64
  Admission Requirements in the Federal Courts . . . . . 72
  Inequalities in Facilities and Programs. . . . . . . . 78
    Vocational Education . . . . . . . . . . . . . . . . 79

Conclusion . . . . . . . . . . . . . . . . . . . . . . . 83

Maps . . . . . . . . . . . . . . . . . . . . . . . . . .

  Map 1. Negro Residential Pattern in Houston-Incorporated Area . . . . . . . . . . . . . . . . 84
  Map 2. Houston Independent School District--Location of Elementary Schools, September 1962. . . . . 85

# Introduction

In the 9 years which have elapsed since the United States Supreme Court's decision in Brown v. Board of Education,[1] Texas among the Southern States has in many respects made the greatest progress toward eliminating racial segregation in its public schools. As in the case of its sister States in the South, at the time of the School Segregation Cases the doctrine of separate schools for white and Negro children was enshrined in Texas both by custom and by law.[2] At the close of the 1962-63 school year, 177 of the State's 919 biracial school districts provided at least some degree of racially nondiscriminatory education.[3] This figure is somewhat deceptive; only 2.3 percent of the State's estimated 310,341 Negro students actually attend schools with white students.[4] Although an estimated 130,000 Negro students, well over one-third of the total, are enrolled in desegregated districts, the great majority still attend separate schools, in some cases by preference, but primarily because of the fact that the larger districts, such as Houston and Dallas, are in the early years of grade-a-year desegregation plans.

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[1] 347 U.S. 483 (1954) (hereinafter referred to as School Segregation Cases).

[2] "Separate schools shall be provided for the white and colored children, and impartial provision shall be made for both." Tex. Const. art. VII, sec. 7. "All available public school funds of this state shall be appropriated in each county for the education alike of white and colored children and impartial provision shall be made for both races. No colored children shall attend schools supported for white children. The terms 'colored race' and 'colored children' as used in this title, include all persons of mixed blood descended from Negro ancestry." Tex. Rev. Stat. art. 2900 (Vernon 1948).

[3] In December 1962 it was reported that there were 1,461 school districts in the State. So. School News, Dec. 1962, p. 1. In May 1963 the Texas Education Agency stated that there were 1,440 "operating" districts. The number of districts has been decreasing for several years as the result of consolidations.

Furthermore, most of the desegregated districts are located in western and southern parts of the State, where the Negro population is small, and where, consequently, the resistance to desegregation has been relatively slight. Although only 12.6 percent of the total population of the State is Negro, 90 percent of the Negro population is concentrated in East Texas, where 20 counties have Negro populations exceeding 30 percent and 3 counties have Negro populations exceeding 50 percent. The traditions and attitudes in that part of the State are more typically southern and strongly prosegregation.

The story of desegregation of the public schools in Texas is one of initial voluntary action in the southern and western sections, which was virtually halted by resistance legislation, then set in motion again by a combination of economic pressures in the small districts and Federal court decrees in the larger cities.

---

[4] The estimated total student enrollment for the State is 2,261,954, of which 1,951,613 are white; the Negro enrollment constitutes 13.7% of the total. The statistics contained in this paragraph are estimates compiled, in most cases, by the Southern Education Reporting Service. See So. School News, June 1963, p. 1. Official enrollment statistics for the 1962-63 academic year have not been released at this writing.

# Initial Reaction: 1954 - 1957

During the period immediately following the School Segregation Cases a "wait-and-see" attitude prevailed in Texas. The State Commissioner of Education, Dr. J. W. Edgar, ordered the public schools to continue on a segregated basis during the 1954-55 academic year. He was supported by a resolution of the State Board of Education stating that until a final decree was handed down by the Court implementing its decision, State segregation laws would continue in full force.[5]

The State legislature convened in January 1955 and adjourned the following June without having discussed the issue of desegregation, although an East Texas legislator attempted to raise it with an appeal for a stronger stand for segregation.[6]

Governor Allan Shivers made continued segregation an issue in his 1954 campaign for re-election. In his first address to the 1955 legislative session four words gave a clue to his position on the question:[7]

> I recommend that no change be made in our system of public education until--and maybe not then--the United States Supreme Court gives us its complete mandate. /Emphasis added./

But at this point the opposition to the Court's decision had not coalesced behind effective leadership, and despite the sporadic statements of prosegregation individuals and groups, voluntary desegregation began to make progress.

The first desegregation in a public school, disclosed in May 1955, was in the Friona school district in far northwest Texas, where the town's three Negro students were enrolled in the formerly all-white school to avoid the necessity for providing them with a separate school or transporting them daily to Hereford, 32 miles away. Commissioner Edgar refused to interfere although State funds had been offered to provide the Negro students with separate facilities.[8]

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5. So. School News, Sept. 3, 1954, p. 11.

6. Id., July 6, 1955, p. 12.

7. Id., Feb. 3, 1955, p. 7.

8. Id., June 8, 1955, p. 7.

El Paso became the first large city in the State to make the move to desegregate when, in June 1955, its school board voted 6 to 1 to bring its 501 Negroes and 24,916 white students together in school beginning in September 1955. At the same time San Antonio, the State's third largest city, announced its hope of initiating desegregation the following fall.[9]

Concerned with the turn of events in west and south Texas, Governor Shivers notified the schools in June 1955 that he saw no need to hurry into desegregation,[10] and a month later urged the boards not to be frightened into mixing the races in the schools.[11]

Despite this admonition, the 1955-56 school year saw over 60 districts open with biracial classes.[12] In San Antonio, 200 Negro students were enrolled in 10 previously all-white high schools, 4 junior high schools, and several elementary schools. Austin, the State capital, enrolled 13 of about 50 eligible Negroes in white high schools[13] as the first step in a grade-a-year plan beginning in the 12th grade. By the summer of 1956 it was reported that 73 of the 1,650 districts in the State had initiated desegregation programs during that academic year[14] and that 1,500 Negroes attended class with white students.[15] All of these districts were in areas of relatively sparse Negro population in west, south, and central Texas; none were in east Texas.

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[9] Id., July 6, 1955, p. 12.

[10] Ibid.

[11] Id., Aug. 1955, p. 2.

[12] Id., Sept. 1955, p. 9.

[13] Id., Oct. 1955, p. 14

[14] Id., Sept. 1956, p. 12.

[15] Id., Aug. 1956, p. 14.

## SEGREGATION LAWS IN THE STATE COURTS

One deterrent to voluntary desegregation was the fact that State constitutional and statutory provisions which required separate schools were still in effect in 1955, and although the State Board of Education had decided that school districts which desegregated would not be denied State funds, there was some concern that the Foundation School Program Act,[16] under which the State furnishes financial aid to local school districts, prohibited the expenditure of such funds in integrated schools.

There was a little delay in testing the constitutionality of these laws. Soon after the school board in the west Texas town of Big Spring desegregated its first six grades in September 1955, a group of local residents brought an action against the board and State officials seeking an injunction to restrain the allocation or expenditure of public free school funds contrary to State law and asking a declaratory judgment that the State constitutional and statutory requirements of segregation were valid and enforceable. The Texas Supreme Court affirmed the judgment of the trial court denying an injunction, and held that the State constitutional and statutory provisions[17] were unconstitutional and void insofar as they required segregation of white and Negro students in the public schools. The questionable provisions of the Foundation School Program Act were construed not to require segregation in the public schools nor to prohibit the utilization of teachers in integrated schools or the use of public funds in paying salaries of teachers thus assigned. As so construed, those provisions of the act were upheld.[18]

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[16] Tex. Rev. Stat. art. 2922-11 through 2922-22 (Vernon 1948). The concern arose from the first two sentences of section 13 of the act:

> The number of professional units allotted for the purpose of this Act to each school district, except as otherwise provided herein, shall be based upon and determined by the average daily attendance for the district for the next preceding school year, _separate for whites and separate for negroes. Such allotments based upon white attendance shall be utilized in white schools, and allotments based upon negro attendance shall be utilized in negro schools_. /Emphasis added./

[17] See note 2 _supra_.

[18] _McKinney_ v. _Blankenship_, 282 S.W. 2d 691 (Tex. 1955).

With the fear of possible loss of State funds allayed, voluntary desegregation in south and west Texas proceeded. By the end of the 1956-57 school year, 145 school districts in the State had either desegregated completely or had initiated programs of gradual desegregation.[19]

It was apparent, however, that resistance to desegregation in many communities, especially those with larger Negro populations, was such that no voluntary action to desegregate the schools would be taken and that Negro students would be required to resort to the Federal courts to have their constitutional rights vindicated. In the summer and fall of 1955 suits were filed to compel desegregation in Dallas,[20] Mansfield,[21] and Wichita Falls.[22] Mansfield became the first public school district in the State for which immediate desegregation was ordered by Federal court decree. The events there marked a turning point in the course of desegregation of the public schools in Texas.

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[19] This is an approximation since no official records were maintained and some districts desegregated without official notice being taken of the fact. So. School News, Sept. 1957, p. 10, reported that 123 districts had desegregated by the end of the 1956-57 school year, but it later appeared from Texas Education Agency statistics on scholastic population that a number of additional districts at least had adopted a policy of desegregation at that time, even though in some districts no Negroes actually attended formerly all-white schools until later. See So. School News, Oct. 1961, p. 9; *id.*, Nov. 1962, p. 6.

[20] *Bell* v. *Rippy*, 133 F. Supp. 811 (N.D. Tex. 1955), *rev'd sub nom. Brown* v. *Rippy*, 233 F. 2d 796 (5th Cir. 1956), *cert. denied*, 352 U.S. 878 (1956), *on remand*, 146 F. Supp. 485 (N.D. Tex. 1956), *rev'd sub nom. Borders* v. *Rippy*, 247 F. 2d 272 (5th Cir. 1957), *rehearing denied* 247 F. 2d 272 (5th Cir. 1957), *on remand*, Civ. No. 6165, N.D. Tex., Sept. 5, 1957, 2 *Race Rel. L. Rep.* 985 (1957), *rev'd*, 250 F. 2d 690 (5th Cir. 1957), *on remand*, Civ. No. 6165, N.D. Tex., Aug. 4, 1959, 4 *Race Rel. L. Rep.* 877 (1959), *modified sub nom. Boson* v. *Rippy*, 275 F. 2d 850 (5th Cir. 1960), *on remand*, 184 F. Supp. 402 (N.D. Tex. 1960), *rev'd*, 285 F. 2d 43 (5th Cir. 1960), *on remand*, 195 F. Supp. 732 (N.D. Tex. 1961).

[21] *Jackson* v. *Rawdon*, 135 F. Supp. 936 (N.D. Tex. 1955), *rev'd*, 235 F. 2d 93 (5th Cir. 1956), *cert. denied*, 352 U.S. 925 (1956), *on remand* Civ. No. 3152, N.D. Tex. Aug. 28, 1956, 1 *Race Rel. L. Rep.* 884 (1956).

[22] *Avery* v. *Wichita Falls Independent School District*, 241 F.2d 230 (5th Cir. 1957).

## MANSFIELD

Mansfield is a small community in the southeast corner of Tarrant County, near Fort Worth. Its population in 1956 was estimated at approximately 1,500, of which about 350 were Negroes.[23] The town is surrounded by and serves a rural agricultural area, but a large number of the town's residents, both white and Negro, are employed in Fort Worth and other nearby urban communities.

For many years the Mansfield school district has operated an all-white elementary school, an all-white high school, and a Negro elementary school. The district has no Negro high school, and in order to obtain an education beyond the elementary level Negro children have been required to travel 36 to 40 miles daily to attend a segregated high school in Fort Worth.

There is some history of communication between the white and Negro residents with respect to the operation of the Negro school. During the late 1940's and early 1950's the local school board followed a practice of appointing members of the Negro community as unofficial "sub-trustees," to advise the board and offer suggestions with respect to the needs of the Negro school. The school provided for Negroes at that time was described as a "one-teacher school" having no indoor toilet facilities or running water and lacking other basic requirements.[24] Because of the deplorable conditions in the Negro school, the Negro "sub-trustees" made repeated requests for improvements in the facilities provided for Negro education, notably a school bus and a well; they also asked for a separate Negro junior high school.

These demands were resisted for several years and brought about an end to the "sub-trustee" arrangement. A well was eventually provided, and in 1954 conditions were substantially improved with the construction of a new elementary school building containing four classrooms and an indoor toilet.

There was no improvement, however, in the provision for the education of the Negro students of high school age, who were required to make their own arrangements and furnish transportation at their own expense, usually by public service bus, to attend school in Fort Worth. Dissatisfied

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23. Griffin and Freedman, Mansfield, Texas: A Report of the Crisis Situation Resulting from Efforts to Desegregate the School System 3 (undated, probably 1956).

24. Id. at 4.

with the existing arrangements, several Negro parents in 1955 requested further improvements in the conditions for Negro education, including regular school bus service to the Fort Worth high school. These requests were followed in the summer of that year by petitions to the board requesting the admission of Negro students to all-white Mansfield High School.

Under this pressure the school board in August 1955 took certain "administrative steps" to improve the arrangements for the Negro high school students. These consisted of making official provision for the students to attend the Negro high school in Fort Worth, including the transfer to the Fort Worth district of State funds allocated for that purpose, and the procurement of a special bus to transport the students to the Fort Worth school.

These arrangements did not alleviate the burden of traveling the considerable distance to the Fort Worth school and in October 1955, after having made unsuccessful attempts to enroll in Mansfield High School, three Negro children brought a class action in the United States District Court for the Northern District of Texas for injunctive relief seeking immediate admission to that school. The court noted the arrangements which had been made at the request of the plaintiffs for attendance at the Fort Worth school and the assurances of members of the school board that they were making efforts to work out a plan of desegregation, and dismissed the suit without prejudice, holding that the relief sought would be "precipitate and without equitable justification" and that the board should have a reasonable length of time to solve its problems.[25]

On appeal, the Fifth Circuit Court of Appeals found that the evidence showed that "there were no administrative difficulties which had to be overcome in order to admit the plaintiffs to the Mansfield High School but only . . . a difficulty arising out of the local climate of opinion."[26] The court reversed and remanded the judgment of the trial court, holding that the plaintiffs were entitled to a declaration of their constitutional right to attend the public high school on the same basis as members of the white race and to a prompt start by the board to effect desegregation there, "uninfluenced by private and public opinion as to the desirability of desegregation in the community."[27] On remand of the case, the district court on

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[25] Jackson v. Rawdon, 135 F. Supp. 936 (N.D. Tex. 1955).

[26] Id., 235 F.2d 93, 94 (5th Cir. 1956), cert. denied 352 U.S. 925 (1956).

[27] Id., 235 F.2d at 96.

August 27, 1956, declared the right of the Negro plaintiffs to attend the Mansfield High School and enjoined the school authorities from refusing the plaintiffs admission to the school.[28]

No effort was made to prepare the community for acceptance. The town's single newspaper, which might have provided a voice of moderation, published letters from White Citizens Council members and editorials expressing prosegregation views. During the week prior to the opening of the school, crosses were burned in the Negro section of Mansfield, and an effigy of a Negro was hung over the town's main street.[29] A last-ditch effort by the school board to delay desegregation failed when, on the first day of registration, the Federal district judge in Fort Worth refused a request for a year's stay of execution of his order.

The first two days of registration saw crowds estimated at from 250 to 400 persons gathered on the school grounds to protest the court order to desegregate and to confront the three Negro students who were expected to enroll. An effigy figure of a Negro was found hanging from the school building, and a number of persons carried intimidating placards. The militant segregationists seemed to be in control. The local constable and the county sheriff were on hand but made no move to attempt to enforce the desegregation order.[30]

Governor Shivers ordered Texas Rangers to the scene to help preserve the peace, and on August 31, 1956, he issued a statement containing probably his strongest attack to that time against desegregation and the Federal court decision requiring it:[31]

> It is not my intention to permit the use of state officers or troops to shoot down or intimidate Texas citizens who are making orderly protest against a situation instigated and agitated by the National Association for the Advancement of Colored People. At the same time we will protect all persons of all

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[28] Id., Civ. No. 3152, N.D. Tex., Aug. 28, 1956, 1 Race Rel. L. Rep. 884 (1956).

[29] Griffin and Freedman, op. cit. supra note 23, at 5.

[30] Id. at 6-8; see also Report of the United States Commission on Civil Rights 1959 at 203-04.

[31] 1 Race Rel. L. Rep. 885 (1956).

> races who are not themselves contributing to the breach of peace. If this course is not satisfactory under the circumstances to the Federal Government, I respectfully suggest further that the Supreme Court, which is responsible for the order, be given the task of enforcing it.

The Governor further expressed a personal hope "that the U.S. Supreme Court /would/ be given an opportunity to view the effect of its desegregation decision on a typical law-abiding Texas community," and he urged the Mansfield school authorities to "transfer out of the district any scholastics, white or colored, whose attendance or attempts to attend Mansfield High School would reasonably be calculated to incite violence."[32]

In the face of this opposition and intimidation, no Negro student appeared at the school to register.

## HARDENING OF THE OPPOSITION

The violence at Mansfield was a physical manifestation of the opposition to desegregation that had been mounting. Early in 1956 Governor Shivers had expressed interest in the recently revived doctrine of interposition and, despite the view of the State Attorney General that the Texas Supreme Court decision in McKinney v. Blankenship[33] probably precluded its use in Texas, he urged Texas Democrats to study interposition and to take a referendum in the primary election on its use in Texas on the primary ballot.[34] Voting on two questions submitted in the Democratic primary election in July 1956, Texas voters indicated by a majority of 4 to 1 that they favored maintaining segregation in the public schools and the use of interposition to halt "illegal federal encroachment."[35] Random samples of public opinion taken by the Texas Poll, a private survey agency serving numerous Texas newspapers, showed resistance to desegregation was stronger in May 1956 than in 1954 and 1955.[36]

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[32] Ibid.

[33] See supra note 18.

[34] So. School News, March 1956, p. 8

[35] Id., Aug. 1956, p. 14

[36] Id., July 1956, p. 7.

In July 1955, Governor Shivers had appointed the Texas Advisory Committee on Segregation in the Public Schools to study three major problems and to make recommendations for their solution: (1) the prevention of forced integration, (2) the achievement of maximum decentralization of school authority, and (3) the ways in which the State government might best assist the local school districts in solving their problems. The committee was later requested to make a study of the doctrine of interposition. On September 24, 1956, the legal and legislative subcommittee of the advisory committee made its report. It examined the judicial precedents and the Court's "scientific authorities" and found that the decision of the Supreme Court in the School Segregation Cases was "clearly wrong and judicially unsound."[37] After a lengthy review of the extent of desegregation in Texas, the results of the vote in the Democratic primary election, and the requirements regarding segregation laid down in the Federal and Texas court decisions, the subcommittee sought to "reconcile" the opposing position by recommending a massive legislative program. The effect of the proposed legislation would have been to reestablish in the desegregated districts and to maintain throughout the State a dual system of schools based on race, which could be abolished by local boards only upon voter approval. Although provision was to be made that no student would be denied a transfer from one school to another because of race or color, transfers would be allowed only with the approval of the local school board, which would take into consideration certain designated factors other than race. Decisions of the local board on assignments and transfers would be appealable to the State Commissioner of Education and then to a Joint Legislative Committee on School Assignments to be established by the State Legislature. Furthermore, any child might be exempted from compulsory attendance at an integrated school, and a tuition grant plan was recommended to allow parents who objected to integration to have their children educated in segregated nonsectarian private schools at State expense.

With regard to the possible use of interposition, the subcommittee recommended the practical course of (1) individual protest and refusal to comply with "what is merely the latest expression of judicial opinion," (2) use by State officials and agencies of all possible legal means "to avoid and circumvent compliance," and (3) adoption by the State legislature of a resolution calling for an amendment to the Federal Constitution "to clarify the State-Federal relationship and thereby halt illegal Federal encroachment in those areas reserved to the several States and their people."[38]

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[37] 1 Race Rel. L. Rep. 1077, 1078 (1956).

[38] Id. at 1083.

## RESISTANCE LEGISLATION

The 1957 session of the Texas Legislature convened in January. In the early weeks of the 120-day session 12 prosegregation bills and an interposition resolution were introduced in the House of Representatives, largely following the recommendations which had been made by the Legal and Legislative Subcommittee of the Texas Advisory Committee on Segregation in the Public Schools. At least two of the bills went further than the subcommittee's recommendations: one prohibited the employment of any member of the National Association for the Advancement of Colored People as a teacher in the public schools or in any other State or local government agency; the other required registration of all persons and organizations whose main activity concerned race relations.[39] Newly elected Governor Price Daniel assured the legislature that he favored continued segregation, recounting that he had defended the State as Attorney General in Sweatt v. Painter,[40] in which the Supreme Court ordered the University of Texas Law School desegregated in 1950, and had spoken out against the School Segregation Cases on the floor of the United States Senate and was one of the signers of the Southern Manifesto.[41]

In a concurrent resolution, the legislature registered an objection by the State "to the effort of the Federal Government to assert an unlawful dominion over her citizens," called for a constitutional amendment "which clearly and unequivocally defines state rights as understood by our forefathers," and declared an intention "to take all appropriate measures honorably, legally and constitutionally available to the State to resist illegal encroachment upon her sovereign power."[42]

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39. So. School News, April 1957, p. 16.

40. 339 U.S. 629 (1950).

41. So. School News, Feb. 1957. p. 13. In contrast, the newly elected State Attorney General, Will Wilson, a former justice of the Texas State Supreme Court, announced that he would help the school boards work out their problems "within the framework of government by law" and that he would follow the "Constitution as interpreted by the courts." Ibid.

42. H.R. Con. Res. 33, Tex. Laws 1957, pp. 1570, 1571.

Eight bills passed the House of Representatives by a two-third majority and were sent to the State Senate. Five of these were reported out from the Senate committee on the waning days of the session.[43] Despite the efforts of Senators Henry B. Gonzalez of San Antonio and Abraham Kazen of Laredo, who filibustered for over 36 hours in an attempt to defeat the legislation, before the session adjourned a referendum law and a pupil placement act were passed by the Senate and signed into law by Governor Daniel.

The referendum law[44] prohibited local school boards from abolishing the dual school system without prior approval of the qualified voters of the school district at an election held for that purpose. Such elections could be called only upon the petition of at least 20 percent of the qualified voters of the district, and could not be held more often than once every 2 years. The school districts which had already desegregated were not affected by the act unless the voters of the district elected to re-establish a dual system. The penalty for violation of the act was loss of State accreditation and funds to the district involved, and a fine of from $100 to $1,000 in the case of individual violators.

The pupil placement act[45] provided for the administration of pupil assignment and transfer in the public schools. It gave local school boards authority to make assignments and transfers of pupils on the basis of some 17 enumerated standards, nonracial on their face, including such factors as "the adequacy of the pupil's academic preparation"; "the psychological qualification of the pupil for the type of teaching and associations involved"; "the psychological effect upon the pupil of attendance at a particular school"; "the possibility or threat of friction or disorder among the pupils or others"; "the possibility of breaches of the peace or ill will or economic retaliation within the community"; "the home environment of the pupil"; "the maintenance or severance of established social and psychological relationships with other pupils and with teachers"; and "the morals, conduct, health and personal standards of the pupil." Appeals from the decisions of the local boards to the State district courts, on the ground of denial of any right guaranteed under the United States Constitution, were provided. The act further required that no child would be compelled to attend any school in which the races were commingled, and upon refusal by the local board of a request for transfer of such child, he would be entitled to "such aid for education as may be authorized by law."

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[43] H.R. 32 (prohibiting State employment of members of NAACP), H.R. 65 (requiring local referendum for desegregation), H.R. 231 (pupil assignment program), H.R. 232 (exemption from compulsory attendance at desegregated schools), H.R. 233 (providing for assignment of pupils to segregated schools each year until assigned on other factors), 55th Leg. (1957). See So. School News, May 1957, p. 11.

[44] Tex. Civ. Stat. art. 2900a (Vernon Supp. 1962).

[45] Tex. Civ. Stat. art. 2901a (Vernon Supp. 1962).

The Little Rock crisis and the use of Federal troops to enforce the desegregation order there in the fall of 1957 aroused further resentment among Texans and prompted the State government to take additional action. On November 11, 1957, Governor Daniel called a special session of the legislature for the purpose of enacting legislation to provide for the closing of schools where Federal troops were stationed and for the defense of suits against public schools.[46]

Three bills were passed at this special session and were signed into law on December 10, 1957. The first authorized the closing of public schools upon a finding by the local board or the Governor "that violence or the danger thereof cannot be prevented except by resort to military force or occupation of a public school," or "in the event the National Guard or any other military troops or personnel are employed or used upon order of any Federal authority on public school property or in the vicinity of any public school for direction or control of the order, operation, or attendance at such school."[47] The second authorized the State Attorney General to render assistance to school boards "in the defense of any lawsuit in a Federal Court which seeks to challenge the constitutionality of a statute of this state."[48] The third required an organization "engaged in activities designed to hinder, harass, and interfere with the powers and duties of the State of Texas to control and operate its public schools" to file, upon the request of a county judge, information as to its membership, officers, place of business, purpose, and relationship to a parent organization.[49]

In addition to these laws, the legislature adopted resolutions (1) urging the President to "desist and refrain from sending Federal troops into Texas and interfering with the constitutional right of the State of Texas to provide, operate and discipline the public schools of Texas";[50]

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[46] 3 Race Rel. L. Rep. 87 (1958).

[47] Tex. Civ. Stat. art. 2906, sec. 1 (Vernon Supp. 1962).

[48] Tex. Civ. Stat. art. 2906, sec. 2 (Vernon Supp. 1962).

[49] Tex. Civ. Stat. art. 2906, sec. 3 (Vernon Supp. 1962).

[50] H. Con. Res. 3, Tex. Laws 1st Called Sess. 1957, p. 122, 123.

(2) proposing that a national convention be called "to propose an amendment to the United States Constitution to clearly and specifically set out certain limits beyond which the United States Government has no authority";[51] and (3) requesting Congress to establish certain requirements of judicial experience for appointees to the United States Supreme Court.[52]

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[51] H. Con. Res. 5, Tex. Laws 2d Called Sess. 1957, p. 206.

[52] H. Con. Res. 32, Tex. Laws 2d Called Sess. 1957, p. 221.

# The Pace Is Slowed: 1957 - 1962

The referendum law had the immediate effect of bringing voluntary desegregation to a virtual standstill.[53] Prior to this time the local boards were often able quietly to establish a policy of desegregation while arousing a minimum of public emotion; it now became necessary to throw the question open to public debate. Formerly, organized opposition was necessary to prevent board action; now, the public had but to withhold its approval. Several districts which had previously announced plans to initiate desegregation in September 1957, postponed their plans indefinitely. Among these were Galveston and Port Arthur on the Texas Gulf Coast.[54]

In the 5 years from the effective date of the referendum law in August 1957 to May 1962, it appears that only 10 districts in the State, out of 15 in which referendums were held, were desegregated as the result of voter approval.[55] All of these districts are relatively small and have few Negro pupils. The favorable votes were, in almost every case, the result of financial pressure. In some cases the schools were faced with the problem of furnishing adequate separate facilities for a handful of Negro students and were in danger of losing State accreditation for their inability to do so. Some schools were transporting their

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[53] Probably contributing to this slowing of the progress of desegregation was a State court order permanently enjoining the NAACP from (1) engaging in a suit in which they have no interest; (2) engaging in political activities or lobbying contrary to State law; (3) soliciting lawsuits directly or indirectly; (4) hiring or paying a litigant to bring a lawsuit. The judge, however, refused to exclude the NAACP from the State. Texas v. NAACP, Civ. No. 56-649, D.C. 7th Jud. Dist., Smith County, May 8, 1957, 2 Race Rel. L. Rep. 678 (1957).

[54] So. School News, Aug. 1957, p. 9.

[55] The districts voting against desegregation during this period were Boerne, Goliad, Houston, Dallas, and Northeast Houston. Boerne, in south Texas near San Antonio, had only two Negro students. So. School News, Sept. 1958. p. 14. In Goliad, also in south Texas, it was reported that 15 of the 34 Negroes of high school age dropped out of school rather than continue under the existing arrangement whereby they were transported daily to Cuero, 31 miles away. So. School News, Nov. 1959, p. 10.

Negro children to schools in other towns, which in west Texas is often a considerable distance away. If the school receiving the students desegregated and refused thereafter to accept out-of-district Negro pupils, the surrounding schools were left without a means of educating their Negro children.

These economic pressures do not obtain in most of the larger school systems where the number of Negroes makes it more feasible to maintain separate schools. Therefore, the only elections called in such districts were in Houston and Dallas, both of which were under court order to desegregate and fearful for their State funds. In each case the voters upheld separate schools by a wide margin.[56] In east Texas, where the Negro population is concentrated, no effort to achieve desegregation through referendum has been attempted or is likely. In these areas the burden has been and will continue to be on the Federal courts to bring about desegregation of the public schools.

## THE REFERENDUM LAW THREATENS

The Federal courts in the State's two largest cities, Houston and Dallas, early became the principal battlegrounds in the legal struggle for equal rights in the public schools. Protracted litigation resulted in court decrees to desegregate under grade-a-year plans commencing in September 1960 in Houston[57] and September 1961 in Dallas.[58]

The court orders forced the school boards in those cities to face the problem of possible loss of State funds and accreditation under the terms of the referendum law. On the one hand the Federal courts would not accept this as an excuse for failure to desegregate, and on the other hand, if the districts complied with the court orders, they risked the loss of funds necessary to operate the schools. The Dallas board attempted to resolve this dilemma by bringing suit in September 1957, in the Federal district court in Dallas against the State Commissioner of Education and other State officials for a declaratory judgment determining its rights under the 1957 legislation if forced to comply with the district court's earlier mandate that it desegregate its schools with all deliberate speed. The trial court's dismissal of the complaint was affirmed by the Fifth Circuit Court of Appeals on May 23, 1958, on the ground that there was no Federal jurisdiction, and further, since the school district, being a creature of the State, could not assert a claim against the State, there was no justiciable controversy and, consequently, no cause of action for declaratory relief.[59]

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[56] So. School News, July 1960, p. 2; id., Sept. 1960, p. 16.

[57] Ross v. Peterson, Civ. No. 10444, S.D. Tex., Houston Div., Aug. 3, 12, 1960, 5 Race Rel. L. Rep. 703 (1960), aff'd, 282 F.2d 95 (5th Cir. 1960).

[58] Borders v. Rippy, 195 F. Supp. 732 (N.D. Tex. 1961).

The Dallas school district then filed suit in a State district court against the same officials seeking a declaration as to the applicability of the State statutes to its district in view of the Federal court desegregation order. Again its efforts to obtain a determination of its rights were thwarted. Affirming the lower court's judgment of dismissal, the Texas Court of Civil Appeals on October 2, 1959, held that since the plaintiff had not attacked the constitutionality of the statutes, the courts could not decline to apply them to the Dallas district, and that the suit was in reality against the State and could not be maintained without the consent of the legislature.[60]

Although the dilemma continued, there was no immediate threat to the school districts since the Federal court orders to that time had been merely to desegregate "with all deliberate speed." However, the problem became urgent the following year when, on August 12, 1960, the Federal district court in Houston issued its order requiring the school district in that city to desegregate the first grade the following September.[61] In response to an inquiry by the Commissioner of Education, State Attorney General Will Wilson issued an opinion on September 6, 1960, that neither the Houston school board nor any other school authority acting under court order had abolished the dual system of public schools within the meaning of the referendum law, and thus were not subject to the penalties of that statute. The Attorney General did not rule on the constitutionality of the law, but concluded that its penalties were applicable only if the dual system of public schools were abolished either by the school board or by other school authority, and not where the dual system was abolished by judicial decree.[62]

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[59] Dallas Independent School District v. Edgar, 255 F.2d 421 (5th Cir. 1958).

[60] Dallas Independent School District v. Edgar, 328 S.W. 2d 201 (Tex. Civ. App. 1959).

[61] Ross v. Peterson, supra note 57.

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[62] Tex. Att. Gen. Op. No. WW-931, Sept. 6, 1960.

# The Pace Accelerates: 1962 - 1963

The 1962-63 school year saw some acceleration in the pace of voluntary desegregation despite the State referendum law. At least 16 additional school districts were desegregated at the beginning of the year as the result of voter approval.[63] Only one district in which a referendum was taken during this period is known to have voted against desegregation,[64] but there probably were others. Again, most of the districts in which a referendum was taken had small Negro populations, the majority being located in west Texas and the remainder in central and south Texas. Many were undoubtedly hardpressed financially to provide adequate separate facilities for the few Negro students involved.

The academic year 1962-63 also saw a substantial increase in the number of Federal district court orders to desegregate. Galveston had been added to the list of districts desegregated by court order in September 1961, when it initiated a grade-a-year stairstep plan.[65] Although the only district actually to desegregate under court order during the 1962-63 academic year was Point Isabel in south Texas, where the town's two Negro children were admitted to the previously all-white school in the fall of 1962,[66] a number of suits were pending. Six districts were under court order to initiate desegregation programs in September 1963.

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[63] So. School News, Nov. 1962, p. 6; id., Jan. 1963, p. 4.

[64] Desegregation was rejected in August 1962 in Close City, a small community in Garza County in west Texas, by a vote of 26 to 25. Id., Dec. 1962, p. 10.

[65] Robinson v. Evans, Civ. No. 2643, S.D. Tex., Galveston Div. Jan. 23, 1961, 6 Race Rel. L. Rep. 117 (1961).

[66] So. School News, Oct. 1962, p. 2.

Notable among these was Fort Worth, the State's fourth largest city and largest completely segregated school system which was to commence desegregation under a grade-a-year plan.[67] Suits were pending in six additional districts, three of which--Beaumont, Longview, and Bryan--are located in "deep-East" Texas and have Negro school populations which approach one-third of the total.[68] The successful conclusion of these suits resulted in bringing the first desegregation in that area of the State. Early in July 1963, however, two other east Texas school districts voluntarily adopted grade-a-year ascending desegregation plans. On July 9, the Port Arthur school board voted to start desegregation at the kindergarten level in September 1963. Port Arthur included in its plan a transfer rule which permits a white pupil to be transferred out of a desegregated school upon a showing that the child would be under "emotional strain by attending an integrated school with Negro classmates."[69] The board of education of Marshall, where Negroes comprise 39 percent of the population and about 48 percent of the public school enrollment, voted in July 1963 to start desegregation in September 1964.[70]

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67. Dallas Morning News, May 4, 1963, sec. 3, p. 8. In June 1963 it was announced that two Negroes had been admitted to previously all-white adult vocational training classes in the Fort Worth public schools. Dallas Morning News, June 7, 1963, sec. 1, p. 6. The other districts which will commence desegregation under court order in September 1963 are Texas City (Galveston County), Northeast Houston (Harris County), Carrollton (Dallas County), Gatesville (Coryell County), and A.& M. Consolidated Independent School District (Brazos County).

68. Longview was ordered to present a desegregation plan to the Federal court by July 27 (Dallas Morning News, June 28, 1963, sec. 1, p. 10) and Beaumont adopted a grade-a-year plan to begin in September 1963 in grade 1. (Houston Post, July 11, 1963, sec. 1. p. 2). The other districts where suits are pending are Georgetown (Williamson County), Waco (McLennan County), and Hamshire-Fannett (Jefferson County). Although the last-named district is located in the same county as Beaumont, its Negro population is small.

69. Houston Post, July 11, 1963, sec. 1, p. 2.

70. So. School News, July 1963, p. 17.

## NEGOTIATED PLANS

Most, if not all, of these suits are in communities in which it would undoubtedly be difficult or impossible to achieve desegregation by the referendum route. In some cases, however, the local school boards have apparently been willing to accede to Negro requests for desegregation either because they see its inevitability or because the attitudes of their members are perhaps somewhat more moderate than those of the community as a whole. Nevertheless, the provisions of the referendum law and the risk of loss of State funds and accreditation have made it impossible for the boards to act. The earlier opinion of the Attorney General that the penalties of the law do not apply where the dual system is abolished by court order suggested a solution to this dilemma. When representatives of the Negro community request desegregation, the local school authorities explain their position under the State law and advise that they can desegregate only with voter approval or under court order. The Negro plaintiffs next make application for and are refused admission to the school (a pro forma exhaustion of remedies). They then file suit. Before trial the school authorities negotiate a desegregation schedule with the plaintiffs, and at the trial the parties offer the plan agreed upon for approval and request the court to enter a consent decree based on the plan. Desegregation is thus achieved at minimum expense and publicity.[71]

## TEXAS CITY

Texas City provides an excellent example of a plan of desegregation negotiated between a moderate school board and representatives of the Negro community and put into effect by Federal court order.

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71. This pattern seems to have been followed in at least four instances. See Eastland v. Northeast Houston Independent School District, Civ. No. 13330, S.D. Tex., Oct. 23, 1962; Washington v. A. & M. Consolidated Independent School District, Civ. No. 13816, S.D. Tex., Aug. 17, 1962; Rainwater v. Smith, Civ. No. 9333, N.D. Tex., Dec. 18, 1962; Evans v. Brooks, Civ. No. 2803, S.D. Tex., April 10, 1962, 7 Race Rel. L. Rep. 396 (1962). However, at least in the Carrollton suit (Rainwater v. Smith, supra), it seems that the parties were under pressure from the Federal judge to agree upon a plan. See Dallas Morning News, Dec. 15, 1962, sec. 4, p. 1. Similar pressure may have been exerted in other cases.

This thriving industrial center and deepwater port is located in Galveston County on the Gulf Coast. From 1950 to 1960 its population increased almost 93 percent to slightly over 32,000 of which 19.6 percent were classified as nonwhite.[72] However, of the total school population of 6,765 reported by the Texas Education Agency for that year, only 505, or less than 8 percent, were Negro.[73]

The Texas City school district maintains and operates a traditional dual system of schools consisting of five elementary, two junior high, and one high school for its white pupils, and one elementary, one junior high, and one high school for its Negro students. The Negro junior and senior high schools are housed together in one building, and the Negro elementary school occupies a separate building on the same campus, located on the south side of town in the predominantly Negro residential section. All the grades provided for Negro students are administered by one principal.

In response to a request made in 1958 by representatives of the Negro community for admission of Negro children to the all-white schools the president of the board appointed a biracial committee, composed of two school board members and four other persons, including two or three Negroes, to study the problem and make recommendations. The president of the board and the school superintendent served as ex-officio members.

For about 2 years the committee made studies and held meetings with school officials and interested citizens, including representatives of the Negro community. At the conclusion of these studies and with little publicity, a plan for desegregation acceptable to the representatives of both the school board and the Negro community was drawn up as recommended by the biracial group. The first step of this plan called for the closing of the Negro senior high school and the transfer of 10th, 11th, and 12th grade Negro students to the white high school. Because the Negro enrollment in the high school grades was too small (less than 100 in 1962-63) to enable the district to provide facilities and curriculum equal to that of all-white Texas City High School with its enrollment of over 1,000 students, the committee recognized the educational advantages of one high school to serve both white and Negro children. Following this initial step there was to be a 2-year waiting period to allow the school authorities to study the results of desegregation at the high school level and to make any curriculum or other adjustments that might be required.

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72. U.S. Bureau of the Census, U.S. Census of Population 1960, General Population Characteristics, Texas. Final Report PC(1)-45B, table 13.

73. Texas Education Agency, Annual Statistical Report 1960-61, p. 2.

Thereafter, desegregation was to proceed at the rate of one grade a year in descending grade order.

In 1961, not long after this plan had been agreed upon, Negro students made a formal attempt to enroll in summer classes at the all-white school. Their admission was, of course, denied, the school board being powerless under the State law to admit them without a referendum or a court order. Fearing failure in a referendum on the issue, the Negro leaders logically chose the lawsuit route.

In August 1961 a class action was brought in the Federal district court at Galveston by a group of Negro children against the Texas City school authorities seeking admission to the public schools. Soon after the filing of the suit, the attorneys for the Negro plaintiffs and the school board agreed to submit to the court the desegregation plan which had previously been recommended. With two changes, the district judge accepted the plan and on April 10, 1962, ordered it to be put into effect beginning in September 1963.[74] Under the court-ordered plan, the three high school grades will continue to be offered in the Negro school and each student will have the option of attending the formerly all-white or the formerly all-Negro school. The court also eliminated the 2-year waiting period after the first step in September 1963, and one additional grade, in inverse order, will be desegregated each year after the first year. These changes in the proposed plan were approved by the attorneys for both sides.

To enable the school administration to make adequate preparations to put into effect the first step of the plan, preregistration was held in January 1963 for Negro students wishing to attend Texas City High School in September. Of the slightly more than 90 Negro high school students, 41 made application for transfer. Late in the spring, meetings were held with the Negro students in order to orient them to the school program and prepare them for the transfer in the fall. By this time the number of Negroes desiring to transfer to the white high school had dropped to 21. The reason for this decline is not known. The Negro principal has suggested that a few of those who had earlier expressed a desire to transfer failed to pass the 9th grade and were not eligible to enter the 10th grade, the lowest to be desegregated this year. A natural hesitancy to abandon familiar surroundings in favor of the unfamiliar and unknown at this state of their education undoubtedly accounts for the decision of many.

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[74] Evans v. Brooks, supra note 69.

Preparations for community acceptance also were undertaken. Members of a biracial committee appointed for the purpose have appeared before civic and other groups in the city to speak in favor of orderly and peaceful desegregation.

## THE REFERENDUM LAW CHALLENGED

Although friendly suits have furnished a partial answer to the problem facing local school boards which were willing to initiate desegregation programs as long as the referendum law was unassailed, the burden of bringing suits in Federal court remained on Negro school children seeking enforcement of their rights.

The constitutionality of that law was not directly in issue until November 1962. Although there is no requirement that local districts report desegregation of their schools, Texas law does require that report on expenditure of State funds be made separately for white and Negro students. State auditors checking these reports in November 1962, discovered that the Benavides Independent School District in Duval County, south Texas, had admitted two Negro pupils to a formerly all-white elementary school the previous March without a referendum or a court order. The State Commissioner of Education advised the district that its State funds would be withheld.[75] The Duval County attorney asked the State Attorney General for a ruling on the constitutionality of the law, and on December 10, 1962, as his term of office drew to a close, Attorney General Will Wilson issued an opinion holding the referendum law unconstitutional.[76] The opinion was based almost entirely on the following language from the opinion of the United States Court of Appeals for the Fifth Circuit in Boson v. Rippy, in which a proposed plan to end racial segregation in the Dallas public schools was in issue:[77]

> We agree with the district court that the holding of an election under Article 2900a of the Revised Civil Statutes of Texas should not be made a condition of a plan of desegregation. It goes without saying that recognition and enforcement of constitutional rights cannot be made contingent upon the result of any election. /Emphasis added by Attorney General./

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[75] So. School News, Dec. 1962, p. 10.

[76] Tex. Att. Gen. Op. No. WW-1490, Dec. 10, 1962.

[77] 285 F.2d 43, 45 (5th Cir. 1960).

The Commissioner of Education announced that he would abide by the opinion unless it should be overruled by another attorney general or the courts, and notified the Benavides district that its funds would be forthcoming.[78]

Newly-elected Attorney General Waggoner Carr, who took office on January 1, 1963, soon let it be known that he would abide by the ruling of his predecessor that the referendum law is unconstitutional,[79] and during the first month of the 1963 session of the State legislature, bills were introduced to prohibit racial or other discrimination by the State or any of its political subdivisions and to repeal the prosegregation laws adopted in 1957. Although one of the bills, which would have repealed only the referendum law, was signed by one-third of the State representatives as cosponsors,[80] opposition to the proposed legislation was substantial. One bill was overwhelmingly voted down by a Senate committee, and the session adjourned in May 1963 without action on the other bills.

With the removal of the barrier of the referendum law, even though it remains on the statute books, the way has been opened for further progress through voluntary desegregation. This factor, in combination with the added economic pressure of the Federal Government's announcement that after September 1, 1963, segregated public schools would be considered "unsuitable" for dependents of military personnel living on base, has moved several local school boards to action in order to retain Federal funds for the education of such children.[81] Abilene, in west Texas, began desegregation in January 1963, when its school board authorized the admission of 38 Negro pupils to a previously all-white elementary school serving the children of personnel from a nearby air force base. Under the board's plan segregation was to be abolished in the first seven grades in all schools in September 1963, and one grade a year was to be desegregated thereafter.[82] At least eight additional districts announced plans to desegregate under local school board order in September 1963, in most cases to avoid loss of Federal funds. Additional districts receiving such funds were expected to join the desegregation movement by the commencement of the 1963-64 academic year.

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[78] So. School News, Jan. 1963. p. 4.

[79] _Id._, Feb. 1963, p. 3.

[80] _Ibid_.

[81] See _Report of U.S. Commission on Civil Rights 1963_ at 200.

[82] So. School News, Feb. 1963, p. 3.

## EXPENDITURES ON SEGREGATED SCHOOLS

One result of the School Segregation Cases and the subsequent drive for desegregation has been to induce improvement of Negro schools. east Texas districts began early to build new Negro schools and improve old ones.[83] A new Negro high school having capacity for 2,000 students was opened in Dallas in January 1963, and construction of three additional Negro high schools was planned.[84] In Houston, School Superintendent John W. McFarland in May 1959 recommended "a crash building program" of 12 buildings and expansion of 11 others to minimize the effect of desegregation.[85] These efforts have sought to minimize desegregation in two ways: (1) by placing white schools in white residential areas and Negro schools in Negro residential areas so that by zoning they would maintain their segregated character, and (2) by making the separate schools for Negroes so good that most Negroes would prefer to attend their own schools.

A 1963 decision of a Texas Court of Civil Appeals may have a far-reaching effect on this practice. Georgetown, a small urban community in Williamson County in central Texas, was threatened by the Texas Education Agency in 1962 with loss of State accreditation for its entire school system, principally because of inadequacies in the facilities of its Negro school. In order to meet the requirements for continued accreditation, a $525,000 bond issue for the construction and repair of school buildings and the purchase of necessary sites therefor was proposed and was authorized by the voters of the district at an election held on July 7, 1962. Having announced its intention to maintain a segregated system, the school board made plans to erect a new all-white junior high school, to expand the all-white high school facilities, and to construct a new 12-grade school for Negroes in the predominately Negro residential section of the town.

A biracial group of Georgetown residents filed suit in the State district court seeking an injunction to restrain the school board from expending funds of the district for the purpose of erecting and maintaining buildings and facilities for the perpetuation of a racially segregated school system. The district court denied the relief sought. On appeal, the Third Court of Civil Appeals in Austin on May 29, 1963, reversed the trial court's judgment and enjoined the school board from "expending any funds belonging to the Georgetown Independent School District for the purpose of constructing any building or other facility which is designed, planned, or calculated to provide segregated schools within the Georgetown Independent School District where such segregation is based solely upon race or color of the students segregated."[86] In a unanimous opinion the court found in the testimony of various members of the school board, clear evidence of a purpose to avoid integration and to maintain racially separate schools by the location of the school buildings, and held that the board could not legally expend funds for the construction of school buildings for the purpose of perpetuating a racially segregated school system. In answer to a contention that the district could not desegregate except by court order or upon voter approval under the referendum law, the court stated that "/t/here can be no question but that Article 2900a is unconstitutional."[87]

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[83] Id., Sept. 1956, p. 12; Id., Sept. 1957, p. 10.

[84] Dallas Morning News, Jan. 24, 1963, sec. 1, p. 14.

[85] So. School News, June 1959, p. 14.

Although an appeal to the Texas Supreme Court is expected, if the decision of the intermediate appellate court is upheld, it may become a significant stimulus to the pace of desegregation in the public schools. This is particularly true in smaller communities where more schools than can be justified on the basis of pupil population are often built and maintained for the sole purpose of preserving racial segregation. Reduction of the number of schools would provide financial relief to the taxpayers and probably would result in an improvement in the quality of education, particularly at the secondary level, by increasing efficiency of administration and allowing expansion of curriculum. Although the decision is necessarily limited to the facts of the case, if it is illegal to construct racially segregated schools, it would seem also to be illegal to expend funds for the maintenance of such schools, at least where a clear purpose to perpetuate racial segregation is shown.

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86. Kreger v. Board of Trustees of Georgetown Independent School District, No. 11099, Tex. Civ. App. 3d Dist., May 29, 1963, So. School News, June 1963, p. 15.

87. Ibid.

# The State in 1963--General Observations

Progress has been and is being made in the desegregation of the public schools in Texas, but the pace in many instances is slow. All the State's major cities, with the exception of Fort Worth, have at least begun to grant equal rights to their Negro pupils; Fort Worth will start in the fall of 1963. In San Antonio, where all grades were desegregated in 1962-63, nearly 2,500 Negro students attended formerly all-white schools.[88] El Paso likewise has desegregated its entire school system. Austin, which started a grade-a-year plan in the 12th grade in 1955 and would have reached the fourth grade in September 1963, decided to desegregate all the remaining grades at the beginning of the 1963-64 academic year.[89] On the other hand, Negro enrollments were small[90] in previously all-white schools in Dallas and Houston, at the end of the second and third years, respectively, of grade-a-year plans.

Now that the referendum law has apparently been voided, voluntary desegregation in communities with relatively small Negro populations will undoubtedly continue, principally under the whip of financial necessity such as the threatened loss of Federal "impacted area" funds. East Texas communities will resist as long as possible and are not likely to give in except under Federal court order. That area of the State is now under attack, and the first inroads will be made with the successful conclusion of the lawsuits pending in Beaumont, Longview, and Bryan. The recent decision of the Texas Court of Civil Appeals enjoining the expenditure of public funds to construct a segregated Negro school,91 if upheld, may result in an acceleration of the process, particularly in the smaller districts.

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88. So. School News, Sept. 1962, p. 4.

89. Austin Statesman, June 15, 1963, p. 1.

90. In Houston there were 65 Negro students enrolled in the first three grades in formerly all-white schools in the 1962-63 school year. In Dallas 18 Negro first-grade students were admitted to previously all-white classes in September 1961, its first year of desegregation. The number of Negroes enrolled in biracial classes in 1962-63 in Dallas is not available, but is believed to be similarly small.

91. Krueger v. Board of Trustees of Georgetown Independent School District, supra note 83.

Almost 7 years have elapsed since the unfortunate disorders in Mansfield. The only community in the State to react with violence to an order to desegregate its public schools seems outwardly, in 1963, to fit Governor Shivers' description of it as a "typical law-abiding Texas community."[92]

As a result of the search for suburban living and its proximity to Fort Worth, Mansfield's population is increasing. The white elementary school had an enrollment in 1962-63 of approximately 610 students, and about 310 students were enrolled in all-white Mansfield High School. The enrollment in the Negro elementary school was reported to be about 175. Overcrowded conditions in the Negro school forced the district to add new classrooms to the building in 1962, but it is reported that the school is still crowded. There are now six teachers, including the principal, for the nine grades which are provided for Negro children.

All channels of communication between the white and Negro residents of Mansfield have been closed since the incidents of 1956. There is suspicion and lack of trust on both sides. Although the Federal court order of August 27, 1956,[93] is still in effect, the school authorities have made no effort or plan to comply with the court's mandate to desegregate Mansfield High School. Many persons, even among the most responsible white citizens of the community, reportedly feel that the Negroes are trying to move too fast to achieve their constitutional rights and that "Northern agitators" are responsible for the difficulties in Mansfield and throughout the South.

In this atmosphere, no Negro student has had sufficient courage to seek enrollment in the high school and it is unlikely that any will within the foreseeable future. The district continues to furnish tranportation to a segregated Fort Worth school for its Negro students of high school age. In 1962-63, 11 Negro children attended high school in Fort Worth under that arrangement. In view of the sizeable enrollment in the Negro elementary school and the fact that at least 10 or 12 students probably complete the ninth grade each year, the conclusion seems inescapable that a large percentage of the Negro children in the community are not receiving any education beyond the elementary level.

With the exception of Mansfield, the citizens in the communities which have desegregated, either voluntarily or under court order, have almost uniformly acted with

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92. 1 Race Rel. L. Rep. 885 (1956).

93. Jackson v. Rawdon, supra note 28.

restraint, responsibility, and respect for law and order. Where seeds of violence have been thought to exist, the local police have generally been well prepared in advance to thwart any possible extremist activities, and few incidents have been reported.

There has also been an absence of conflict between Negro and white students in desegregated schools. Dire predictions of riots by white students, such as were made by the head of the White Citizens' Council in Dallas in January 1958,[94] have not been borne out. Though there has been little social mixing, generally Negro students have been accepted into such extra-curricular activities as athletics.

One unfortunate consequence of the desegregation of formerly all-white schools and the elimination or reduction in size of separate Negro schools has been the loss of jobs for Negro teachers.[95] Since it is unlikely that Negro teachers will be accepted in predominantly white classes for some time to come, and since Negro teachers are not expected to compete favorably with white teachers, at least in the near future, this trend will undoubtedly continue. There is probably less immediate threat to Negro teachers in the larger school systems where, because of residential patterns, many schools will probably remain predominantly Negro for a number of years even after the completion of grade-a-year desegregation plans.

The conclusion seems inescapable that many Negro students who have been given the choice of attending biracial classes in previously all-white schools have elected to remain in all-Negro schools, either by preference or as a matter of convenience. Odessa, in west Texas, adopted a policy of desegregation in 1955, but as of September 1957 no Negro student had applied for admission to the white school.[96] Of Lubbock's 2,111 Negro students, only 6 were enrolled in white schools in December 1958.[97] In Austin, where the district's grade-a-year plan reached the sixth grade in the 1961-62 academic year, only 9 of the 486 Negro sixth-graders actually enrolled in formerly all-white classes that year, and only about 200 out of almost 5,700 Negro students attended biracial schools. The same year in Victoria, in south Texas, which initiated a grade-a-year desegregation plan in 1955, slightly less than one-third of the eligible Negro students attended school with white pupils. Even in San Antonio, where the greatest progress has been made, approximately two-thirds of the Negro pupils chose to attend all-Negro schools.[98] Furthermore, several school boards have been asked by members of the Negro community not to abolish the separate Negro schools.[99] It seems possible that the remnants of the dual system may be prolonged, not necessarily by opposition of the segregationists, but by the desire of many Negro students to attend their own schools. However, even this will no doubt diminish as the Negro becomes more accustomed to his newly-found equality. But much remains yet to be accomplished before Texas can claim its Negro citizens enjoy equal rights in the area of public education.

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[94] So. School News, Feb. 1958, p. 3.

[95] Unofficial reports in January 1959 showed that 50 or more Negro teachers had been displaced as of that time, while only three had been retained to teach mixed classes. So. School News, Jan 1959, p. 3. See also Id., Dec. 1961, p. 14

[96] Id., Sept. 1957, p. 10.

[97] Id., Jan. 1959, p. 3.

Houston, because of its size and the fact that many smaller communities in the State look to it as well as to Dallas for leadership in the field of public school desegregation, is of special importance. The last section of this report is devoted to that city.

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[98] Id., Dec. 1961. p. 14.

[99] Ibid.

# Houston

## INTRODUCTION

Houston is the largest city in Texas. It is also the largest in the former Confederate States and is undoubtedly one of the Nation's fastest growing urban areas. Its population in 1960 was slightly over 938,000,100 and it is estimated that the population in 1963 approaches 1,000,000, making it the sixth city in size in the United States.

Approximately 23 percent of the city's population is Negro, and similar to many urban communities, the Negro population is growing at a faster pace than the white population. From 1940 to 1960 the Negro population increased 147.4 percent, while the increase in the number of white residents was 143 percent. Comparative figures for the period from 1950 to 1960 are perhaps even more indicative of the present trend. During that period, the increase in the Negro population was over 73 percent, the white population increasing at the substantially smaller rate of 53.2 percent.

The areas of Negro residence are graphically demonstrated in map 1 in this report. The greatest concentrations of Negroes are located relatively near the center of the city in the so-called Third Ward, south of Buffalo Bayou and east of Main Street, and Fifth Ward, also east of Main Street, but north of the bayou. Other Negro residential areas spread out from the two principal "ghettos," and a substantial part of the north side of the city is occupied by Negroes. Other large predominantly Negro residential areas are found in the extreme southern and eastern sections of the city, but those areas are more sparsely populated and the concentrations of Negroes there are smaller.

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100. U.S. Bureau of the Census, U.S. Census of Population: 1960--General Population Characteristics, Texas Final Report PC(1)-45B, table 13. All of the statistics relating to population in this and succeeding paragraphs were taken or derived from the U.S. Census of Population, for 1940, 1950 and 1960 as indicated. The statistics given for Negro population are those for the census "nonwhite" category, which also includes the Indian, Japanese, Chinese, Filipino, and other nonwhite races. However, it is believed that the number of persons of such other races in Houston is so small that the census statistics for "nonwhite" is essentially "Negro."

Residential patterns in some areas have been gradually changing as the mushrooming Negro population, in search for new housing, has spread into older white neighborhoods which former residents have abandoned in favor of racially restricted surburban areas.

The first break in the pattern of racial segregation in the city came in 1952 when a new municipal airport, constructed partially with Federal funds, was opened with nonsegregated facilities. About 5 years later negotiation between representatives of the Negro community and the city's privately owned transit company resulted in prompt desegregation of the buses and provided an excellent example of cooperation between the two racial communities. Since that time, some of the downtown lunchcounters, restaurants, and hotels, the railroad and bus terminal lunch rooms and waiting rooms, the municipal golf courses, and, lately, the city's public swimming pools have been desegregated. Although some of these steps have been taken under pressure from Negro leaders, including legal action in some cases, the city has been relatively free from racial incidents.

Despite the progress which has been made, Houston in 1963 is still largely a segregated city. Residential housing is almost totally segregated, except for older neighborhoods which are undergoing transition from white to Negro. Employment opportunities for Negroes are limited. On the whole, the city's churches have not seemed willing to assume a position of leadership on the moral issue of racial discrimination.[101] And the very gradual pace of desegregation of the public schools indicates that it may be many years before significant numbers of Negroes are afforded equal educational opportunity.

The public schools in the city are operated by the Houston Independent School District, the boundaries of which are generally, although not entirely, coterminous with those of the city.[102] The governing body of the district is an elective board of education composed of seven members, who hold office for staggered terms of 4 years and serve without compensation. The superintendent of schools is the principal administrative officer, and he is assisted by four deputies, four assistant superintendent, and various other administrative personnel.

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101. For example, in the spring of 1963 one of the largest Protestant churches in the city denied membership to a Negro on the basis of his race. The pastor reportedly said that his membership in the church would not "promote the Lord's work."

102. See map 2 of this report. The most recent school district map, from which map 2 was derived, was prepared in February 1961. Since that date the district has been enlarged somewhat to include areas recently annexed by the city, principally to the west.

The total enrollment in the public schools during the 1962-63 academic year was slightly less than 200,000 reportedly making it the Nation's sixth largest school district. Of this enrollment, almost 29.3 percent were Negro. In the 6-year period from 1956-57 to 1962-63, enrollment increased at an average annual rate of 6.75 percent and, consistent with the pattern of population growth, Negro enrollment has increased at a somewhat faster pace than enrollment of white students.

The district has traditionally operated a dual system of schools with separate schools for white and Negro pupils. All administrative, teaching, and supervisory personnel in the white schools are white, and the Negro schools are staffed by Negro principals, teachers, and counselors. There are separate geographic attendance areas for each school in each of the racially separate systems, so that the entire district is divided into two sets of school zones, one for the white schools and one for the Negro schools. The district's 109 white elementary schools feed into 19 junior high schools, which in turn feed into 13 high schools. In the separate system for Negro pupils, there are 41 elementary schools, 9 junior high schools, and 5 high schools. The rapid increase in enrollment has forced a large-scale program of expansion of both white and Negro facilities and new school construction during the last few years. In some cases formerly white schools have been converted to Negro schools as the racial composition of older neighborhoods has shifted. The geographic distribution of the white and Negro elementary schools, which is shown in map 2, closely follows the city's residential pattern. As a result of a court ordered gradual plan of desegregation, token numbers of Negroes have been admitted to white elementary schools in each of the past 3 school years beginning in September 1960, and during the 1962-63 academic year 65 Negro pupils attended six formerly white elementary schools.

This is the story of the efforts to attain and to deny the constitutional rights of Houston's Negroes to racially nondiscriminatory public education.

## INITIAL EFFORTS: 1955 - 1960

The Houston school board did not delay long in facing the Supreme Court's mandate in the School Segregation Cases. On March 14, 1955, before the Court's implementing decision was issued requiring a "prompt and reasonable start toward full compliance" with its earlier ruling,[103] a motion was adopted that the board act as a committee of the whole to set up machinery for a biracial commission to study interracial problems related to integration. A committee composed of 25 prominent members of the community, including 10 Negroes, was appointed the following June to undertake a study and make recommendations to the board.

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[103] Brown v. Board of Education, 349 U.S. 294, 300 (1955).

Less than 2 months later, on August 8, 1955, the committee recommended to the board a course of action which must have startled many people: (1) that segregation be abolished immediately at the administrative level under the supervision of the superintendent of schools; (2) that all meetings of all school employees be held on an integrated basis; and (3) that the board prepare for complete integration in the public schools by September 1956, and, if the superintendent should find it possible under existing circumstances, that integration begin in certain schools in September 1955. This report was referred to Superintendent W. E. Moreland for his study and recommendations, but board consideration of the committee's proposals was postponed because of the litigation pending in the State courts involving the constitutionality of State legislation requiring racial segregation in the public schools.[104]

On November 14, 1955, the superintendent presented a progress report to the board advising that setting a date for achieving complete integration, as recommended by the biracial committee, must necessarily await completion of a thorough study of the problems involved. With respect to the committee's recommendation that meetings of personnel be held on a nonsegregated basis, he pointed out that he felt free under existing policy to call such joint meetings as were essential, and suggested that the present policy be continued until plans for desegregation of the schools were formulated by the board. The superintendent was instructed to proceed with the studies and to submit a report when they were completed.

After an 8 months' study, the superintendent presented his report to the board at a special meeting held on April 30, 1956. Among other things, the report pointed out that the qualifications of many Negro teachers in the school system were below those of their white counterparts. There was also evidence, the report said, of a significant difference in level of achievement between white and Negro students: by the eighth grade the lag in achievement of the average Negro student as compared with the average white student ranged from 1 year and 5 months in spelling to 3 years and 3 months in paragraph meaning. The superintendent made no recommendation with respect to desegregation of the schools, and his report was received and filed by the board without discussion.

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[104] McKinney v. Blankenship, supra note 18; see discussion at pp. 5-6 supra.

At the same meeting a statement of policy was adopted by the four-member "liberal" majority on the board. This report stated that although no member of the board was responsible for compulsory segregation and no member desired compulsory integration, the board recognized its obligation to follow the mandate of the Supreme Court with reasonable diligence. Immediate desegregation would be extremely difficult and hazardous, it was pointed out, because of a serious problem of overcrowding and shortage of classrooms in both white and Negro schools. It was suggested, therefore, that further consideration of desegregation be postponed until after the authorization of a proposed $30 million bond issue, and the completion of a new building program to relieve the existing overcrowded conditions, which was expected to be not later than September 1958. In the meantime, new school district lines would be drawn up to eliminate the present overlapping of white and Negro school zones, and the board would appoint biracial teacher committees to study and prepare a program "to meet the new educational and social problems and to implement attaining the desegregation of the public schools within a reasonable time and in a reasonable manner."[105] Assurance was given that any future plans would include a liberal transfer policy so that "no Negro child will be compelled to attend a school which is now white or will be predominantly white, and no white child will be compelled to attend a school which is now Negro or will be predominantly Negro." This was supported by the board's statement that it was confident "that most Negro students prefer to go to a school where practically all their classmates are Negroes, staffed by a Negro principal and Negro teachers who are more understanding of their racial characteristics and habits."[106] The policy statement concluded:[107]

> If the Bond issue is submitted and approved by the voters and a construction program is carried out so as to give every section of the city reasonably equal and adequate school facilities and a liberal policy of transfer is continued so that no Negro student will be compelled to attend against his will a school predominantly white in student body and teaching staff, and no white child will be compelled against his will to attend a school predominantly Negro in student body

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105. Minutes, Board of Education, Houston Independent School District, April 30, 1956, p. 7. (Minutes of meetings of the Board of Education are hereinafter cited as Minutes, followed by the date of the meeting).

106. Ibid

107. Ibid.

> and teaching staff, it is our opinion that such a course will be approved by the overwhelming majority of our people, both white and Negro, and our problems with reference to desegregation will largely be resolved.

The intimation seemed clear that the impact of desegregation would be substantially less after the proposed construction program was completed since Negro schools would be located in Negro residential areas and white schools in white residential areas.

Despite the mildness of this policy statement, particularly by comparison with the earlier committee recommendation, it was strenuously opposed by the "conservative" minority of three board members, who urged that a stronger stand be taken in favor of continuing the existing dual system, at least as a temporary expedient, against the possibility that the doctrine of interposition might successfully nullify the effect of the Supreme Court's decision, and that continued studies of the problem and efforts to upgrade the Negro teachers and students should be made.

It was further noted at this meeting that progress in integrating staff meetings had been extremely small, and a motion was adopted that all meetings of employees and administrative staff of the school district, including in-service training of teachers, be desegregated by September 1956.

During this period some degree of organized opposition to desegregation, apart from that which had been expressed by a minority of the board members, had begun to be manifested. On February 27, 1956, a televised hearing on the issue had been held by the school board at the request of one of the prosegregation groups, and was largely taken up with emotional pleas for continued segregation. Representatives of anti-segregation groups who appeared to speak were subjected to heckling and harassment. Furthermore, the results of the State referendum on the segregation issue in the Democratic primary election in July 1956[108] undoubtedly served to encourage and strengthen the prosegregation cause in the city.

The school board's inaction and the increasing community opposition to desegregation made it apparent that court action would be required to achieve desegregation of the public schools. On September 7 and 10, 1956, attempts were made by Negro children to enroll in two white elementary schools and a white junior high school.[109] Following the exhaustion of administrative remedies, on December 26, 1956, a class action was filed in the Federal district court in Houston on behalf of two Negro children against the Houston school district and its officials. The plaintiffs sought a declaratory judgment that operation of the Houston schools on a racially segregated basis was unlawful and that State statutory and constitutional provisions requiring racial segregation in the public schools were void, and requested injunctive relief to require school officials to admit the plaintiffs to the schools on a racially nondiscriminatory basis.

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[108] See text following note 34, supra.

Aided by the growing community opposition to desegregation, two new "conservative" members were elected to the school board in the fall of 1956, on a platform favoring maintenance of a dual school system, replacing two members of the "liberal" majority. Faced with a lawsuit over the issue and apparently dissatisfied with previous board action the new "conservative" majority, immediately after taking office on January 2, 1957, adopted a motion to appoint a committee for the continued study of the desegregation question, to be composed of one member and an alternate appointed by each member of the board. It was specified that no person could be appointed to the committee who had served on such a committee in the past; who had served as a member of the school board; or who was then a member of the National Association for the Advancement of Colored People "or any other organization of individuals of unreasonable mind on this subject."[110]

An all-white committee meeting these requirements was appointed on January 14, 1957. The following month, at the request of the committee itself, the board authorized the appointment of a Negro member and alternate to the committee.

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109. At the junior high school it was reported that a Negro father waited with his daughter for 3 hours in the crowded school office, the principal and staff ignored jibes and threats made by a handful of unruly white teen-age students. By the time the principal finally escorted the two Negroes to the door of the school, feelings were so high that several students threw stones at two Negro pedestrians who happened to be near the school grounds. See Houston Post, Sept. 9, 1956, sec. 1, p. 1.

110. See Minutes, May 6, 1957, p. 7, at which the motion adopted at the meeting of January 2, 1957, was read.

On January 18, 1957, the Federal district court held a hearing on an application for a temporary injunction to compel immediate desegregation of the schools. At the conclusion of the evidence the plaintiffs' application for a temporary injunction was withdrawn, and the court requested that the officials of the school district be prepared to present a statement of the course of action they proposed to take in the light of the Supreme Court's mandate at a hearing on the merits of the suit to be held the following May.

On May 6, 1957, after almost 4 months of diligent work, the Study Committee on Desegregation presented its report and recommendations to the board. The committee pointed out that, although no alternative to eventual desegregation was in sight under the decisions of the Supreme Court, the district might have considerable choice as to the method and time of desegregation if a program was formulated and pursued in good faith. The report then proceeded to consider the best time and method of desegregation. It was noted that the Houston school district was faced with one of the most crowded classroom conditions in the United States, and that $30 million was being spent for additional school buildings. Redistricting of existing schools, which would be necessary for desegregation on any class level, would require at least 1 year and would create extreme overcrowding in certain buildings. Furthermore, such redistricting would be only temporary, pending completion of the building program. For these reasons, the committee argued, the problem of desegregation would be greatly lessened if the district could delay desegregation until the completion of the building program some time in 1959. With regard to the method of achieving desegregation, the committee found that the greatest problem was the substantial difference in academic standards of achievement of students in Negro and white schools, which it felt made it unfair to all students to desegregate all grade levels in one year. Considering that 75 percent of the district's Negro pupils were academically behind 75 percent of the white students; it argued that any attempt to desegregate on any level above the first grade would create remedial requirements that probably could not be satisfactorily met. On the basis of these considerations, the committee recommended that a program of desegregation be started at the level of the first grade upon the completion of the elementary building program, but in no event later than 1960, and that one additional grade be desegregated each successive year thereafter. It was further recommended that "every consideration be given requests for transfer of students consonant with acceptable administrative practices."[111]

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[111] Minutes, May 6, 1957, p. 5. The lone dissent to this report was made by one of the two Negro members of the committee, who recommended total desegregation of the schools in September 1957. Although his minority report carried virtually no weight in view of his

On May 17, 1957, 3 days before the scheduled hearing in the Federal court on the merits of the suit to compel desegregation, the school board adopted a resolution in answer to the court's request for a statement as to its proposed course of action. The resolution recited the extensive studies which had been undertaken by the board and the recent recommendations of the Committee on Desegregation. It was stated that, on the basis of the findings of that committee, no course of action consistent with the welfare of the district could be taken during the current term of office of the school board, since the building program would not be completed before the board's term expired. In view of the fact that no action adopted by the board would be binding upon a future board it claimed that any effort at that time would be futile. Furthermore, the board asserted that the committee's report and recommendation related only to a basic course of action, and additional studies of problems and solutions to minimize the impact of any action would be needed. In view of these considerations, the board resolved "that the report and recommendations of the Committee on Desegregation be given due consideration and that, consistent therewith, no desegregation be effected by the Houston Independent School District prior to the completion of the building program, or prior to 1960, whichever is earliest."[112] It was further resolved to accelerate the building program in order to relieve the school housing shortage as quickly as possible. The superintendent was directed to appoint committees of school personnel to work out details of, and solution to, various problems that might arise in connection with the proposed plan of desegregation.

At the 4-day trial which began in the Federal district court on May 20, 1957, attorneys for the school district presented the board's resolution and argued that the board was proceeding in good faith with plans to desegregate the schools but, because of the size of the district (the largest segregated school system in the country at that time) and the administrative problems involved, additional time was needed.

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race, it was further discredited by revelation of the fact that he had been a member of the NAACP and was, therefore, ineligible to serve on the committee.

[112] Minutes, May 17, 1957, p. 5.

After due deliberation, on October 15, 1957, the district court handed down its decision. The court recognized that the defendants' argument for a temporary delay in the enforcement of the constitutional rights of the plaintiffs was "cogent and weighty."[113] Even though it also found that there were circumstances lending considerable support to the plaintiffs' contention that the board was not proceeding in good faith but was using dilatory tactics to maintain the status quo until the last possible moment and sought ultimately to pass on to the courts the task of devising a plan of desegregation, the court stated that it did not wish to deny the board the opportunity "to temper the impact of the Brown decision"[114] if it desired to do so. The court noted that the board's exercise of its administrative functions, the rules relating to zoning, transfers, and other matters would ultimately determine the extent to which the races were intermingled in the classrooms, and in this regard it further stated:[115]

> The experience of those schools which have begun the desegregation process shows that the vast majority of children of both races prefer the association of their own kind, where freedom of choice is allowed them. They seek not so much the enforcement, as the recognition, of their right to attend nonsegregated schools.

The board was warned, however, that any delay would be warranted only if it immediately came to grips with its problem. The attorneys for the plaintiffs had amended their original request for desegregation by a specific date to one directing that the defendants proceed with all deliberate speed to desegregate the schools. The court issued its decree declaring the policy of racial segregation in the Houston schools to be unlawful, declaring unconstitutional and void the State constitutional and statutory provisions requiring the maintenance of racially segregated schools, and enjoined the school district and its officials from requiring segregation of the races in any school under their supervision, "from and after such time as may be necessary to make arrangements for admission of children to such schools on a racially nondiscriminatory basis, with all deliberate speed."[116] The court retained jurisdiction of the suit for such further orders as might be necessary.

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[113] Ross v. Rogers, Civ. No. 10444, S.D. Tex., Oct. 15, 1957, 2 Race Rel. L. Rep. 1114, 1116 (1957).

[114] Id. at 1117.

[115] Ibid.

[116] Id. at 1118.

Under the "conservative" majority on the board and a new acting superintendent who had taken over on the resignation of Dr. W. E. Moreland in the summer of 1957, initial progress which had been made earlier in the desegregation of personnel meetings received a setback. In September 1957, the policy of holding meetings of teachers, principals, and administrative staff members on a racially nonsegregated basis which had been initiated the prior year was abandoned. Acting Superintendent G. C. Scarborough said that the decision on the matter was being left up to the persons who called the meetings, and that it was sometimes more practical to hold such meetings on a segregated basis since the separate groups sometimes had different problems. Also, the directory of personnel and schools, which had been published without racial classifications the previous year, was again issued with separate sections for white and "colored" schools and personnel.

In February 1958, Acting Superintendent Scarborough disclosed that a four-point upgrading program for Negro principals, teachers, and pupils in the first six grades would be initiated the following summer as the first step toward compliance with the court order to desegregate with all deliberate speed. Under this program Negro elementary school principals and teachers would secretly observe, through one-way glass, Negro pupils being instructed by white supervisors. Beginning the next fall white supervisors were to demonstrate good classroom procedure and improved teaching techniques at frequent intervals on all grade levels at two Negro "observation" schools. The other two points in the program, which were to be delayed indefinitely until proper personnel could be found, envisioned the appointment of two white supervisors to assist in the supervision of newly assigned Negro teachers and faculty inservice activities in the Negro elementary schools, and the appointment of a consultant to direct a course to be entitled "Testing in Relation to Teacher Planning for Instruction," in which the principal and a teacher representative from each Negro elementary school could be enrolled. It was expected that this program would raise the level of Negro pupil achievement substantially within the ensuing 3 years.

On August 1, 1958, a new Superintendent of Schools, Dr. John W. McFarland, took office and the following November the "conservative" majority of the board was re-elected. It is noteworthy, however, that the first Negro ever to serve on the Houston school board, Mrs. Charles E. White, defeated the "conservative" incumbent in the contest for one of the board positions.

By May 1959, the 2 years which school officials had previously indicated to the Federal court would be required to solve their major problems--completion of the construction program and a school census with a view to redistricting--had elapsed. Calling attention to the fact, the plaintiffs asked the court to order the board forthwith to desegregate the schools. The court directed the board to file by August 16, 1959, a report of the progress which had been made in meeting its problems and a plan for the desegregation of the school system.

The previous December the school board's attorney had described to the board possible methods for achieving desegregation, including a plan under which gradual desegregation might begin in schools located in areas of the city where there was least resistance to desegregation, the degree of resistance being determined at an election held for that purpose. Perhaps with this idea in mind, and apparently concerned over possible loss of State funds under the referendum law[117] in the event of a court order to desegregate, the board's attorney recommended in June 1959 that steps be taken immediately to call an election on the question and advised that such an election should be called "/b/efore any desegregation by plan or by court order can be effected in this district."[118] Pursuant to this recommendation, on June 8, 1959, the board instructed the superintendent to take such legal action and steps as might be necessary to call an election.

On August 16, 1959, the board filed a voluminous reply with the Federal court, reporting on steps which were being taken in preparation for the desegregation of the schools. Substantial progress was being made or was planned, it was reported, to raise the level of achievement of Negro students and to improve teaching, library facilities, and curriculum in the Negro schools. The achievement level gap between white and Negro students had been reduced, but Negro pupils still lagged behind their white counterparts. The inservice training program for Negro principals and teachers was described in detail. With respect to library facilities, it was reported that in 1958-59 only 14 Negro elementary schools had central libraries and that, whereas 70 percent of the white schools had two or more books per pupil in their libraries, only 6 percent of the Negro schools had as many as two library books per student. These statistics represented an improvement, however, over the 1956-57 year, when only four Negro elementary schools had central libraries. A 4-year program to improve the library conditions in Negro schools was promised for 1957-58, and it was stated that by 1963 all schools would have at least five volumes for each pupil enrolled. An increase in the number of courses for gifted students in the Negro schools was also promised.[119] Despite the length of this report, its effect was to state that the board was still confronted with many problems and had no concrete proposal as to when it would initiate any plan of desegregation.

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[117] Tex. Civ. Stat. art. 2900a (Vernon Supp. 1962); see discussion at p. 13 supra.

[118] Minutes, June 8, 1959, p. 107.

[119] See Houston Post, Aug. 18, 1959, sec. 1, p. 8.

Again the court proceeded with deliberation, and more than 7 months later, in early April 1960, Federal District Judge Ben C. Connally advised the attorney for the school board that he considered the reply filed the previous August inadequate and that he could only consider any requests for additional delay as an indication of bad faith and an intention to continue the matter indefinitely. In the event the board failed to adopt a program of desegregation, the judge stated, he had no alternative but to grant immediate relief to the plaintiffs. June 1, 1960, was fixed as the date on which a plan must be approved by the board and filed with the court.[120]

At its regular meeting on April 11, 1960, the board was advised of this development, and it decided that before any desegregation program could be discussed, a referendum on the question had to be held to avoid the loss of the $6,500,000 in State aid. Although the board had instructed the superintendent to take steps to call such an election the previous June, there seemed to be no real support for the referendum and very few signatures on the required petition had been obtained. In order to expedite the election, the superintendent, the board attorney and one member of the board, as a committee, were authorized to use all available means and to make whatever expenditures were necessary to circulate petitions calling for the referendum.

The drive to obtain signatures was a major operation. Advertisements were placed in the newspapers and voters urged to clip, sign, and send them to the school office; petitions were rushed to all school principals in the district,[121] and the superintendent urged parents to go to the schools to sign them. Tables with petitions were placed in the lobbies of the major banks and other buildings. The newspapers assisted in the drive, stressing that the election was vital to the school system and that without it the district stood to lose $6,500,000 in State funds. There seemed to be no speculation, however, over what might happen if a majority of the voters should oppose desegregation in the referendum. By late April signatures of the required 20 percent of the qualified voters in the district had been obtained, and on May 3, 1960, the board ordered an election to be held on June 4, which was the earliest feasible date even though it was beyond the court's June 1 deadline.

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[120] Letter from U.S. District Judge Ben C. Connally to Joe H. Reynolds and Weldon H. Berry, April 8, 1960, 5 Race Rel. L. Rep. 704 (1960).

[121] The reporter was informed that Negro principals were told that they need not assist in the signature drive, but that they were expected to do so. In the case of white principals, it was suggested that there might not be sufficient funds to pay salaries if the referendum was not held. It was also alleged that one Negro principal who refused to cooperate in this endeavor was a few months later put on a probationary contract and efforts were made to induce him to resign as a result of expressions of antisegregation sentiments on this and other occasions, although ostensibly for other reasons. The accuracy of this allegation is not known; the principal is now deceased.

The ostensible purpose of the referendum was compliance with State law, and the campaign for signatures was based on the issue of loss of State funds. The real reason, however, in the view of several board members, was to determine the areas of least resistance for the location of desegregated schools under an area-system plan. This was made clear by the vice president of the board at a meeting on May 9, 1960:[122]

> Now I'm not worried so much about the $6.5 million. If that judge said you got to integrate, that law would be paramount over this state law. We all know that. The main thing I'm worried about is that the people should know that the areas which want segregation are going to get it. That is what this election is for.

The president of the board agreed with this evaluation.

Because of the impossibility of holding the referendum election prior to June 1, early in May the board asked the court for a 30-day extension of that deadline for filing a desegregation plan. On May 16, District Judge Connally denied the request for additional time and at the same time warned the board that any school desegregation plan drawn up on an area preference basis would not be acceptable to him.

On May 30, just 2 days before a plan had to be filed with the court, the board met to reach a decision. The president opened the meeting by reading a long statement criticizing the decision of the Supreme Court requiring desegregation but pointing out that the board was obligated to carry out the Court's mandate, "unpalatable as the decision is to them."[123]

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[122] Houston Post, May 10, 1960, sec. 1, p. 1.

[123] Minutes, May 30, 1960, p. 3.

In reply to "misinformation being bandied about by those seeking approval of integration" at the June 4 referendum, the president emphasized that it was not true that the district would lose its State funds if it failed to integrate and stated that the issue was "solely the question as to whether you vote for or against integration."[124] He further expressed a "firm conviction that the present problems as they exist stem largely from without, engendered by forces who would choose to use the Negro for political purposes and whose efforts can only serve to retard their economic and educational advancement."[125] He stated that there were certain fundamentals which must be included in any plan adopted by the board:[126]

> (1) an educational environment that permits of achievement must be created; (2) student and social activities must be acceptable to both races; (3) force must be eliminated from any solution and the doctrine of 'Optional and Equal' made applicable; (4) any plan adopted must be conducive to the preservation of racial integrity.

Four plans which had been suggested to the board were outlined: (1) a system-wide grade-a-year plan beginning with desegregation of the 1st grade; (2) a similar plan commencing in the 12th grade and one grade a year thereafter (3) an area-system plan beginning with the first five grades, the desegregated school to be located in the area of least opposition as determined by a poll of the parents; and (4) a plan of desegregation of all grades in one senior high school, its feeder junior high schools, and its feeder elementary schools, to be selected on the advice of the superintendent and administrative staff, participation being optional with the parents of children residing in those school districts. The proposal that all schools be immediately desegregated, recommended by the first committee appointed by the board to study the problem, was seemingly not felt worthy of consideration and was not mentioned. It was noted that the third plan had apparently been ruled out by the court even before submission.

With little discussion, an area-system plan was adopted by the board as the least objectionable of those under consideration. Despite the warning of District Judge Connally, it was apparent that the members of the board had been encouraged by the precedent set a few days earlier by the Federal district court in Dallas which suggested a similar area-system or "salt and pepper" plan.[127] Under the plan adopted one elementary school, one junior high school, and one senior high school would be permitted to become completely integrated on a voluntary basis in September 1961. The location of the schools to be desegregated would be determined by the school administration, taking into consideration the results of the referendum election to be held on June 4 and additional surveys. No child would be forced to attend an integrated school. In order to transfer to a desegregated school, each child would have to obtain the approval of the principal of the school which he attended; be tested "to assure the proper grade level achievement;"[128] transfer; and take a medical examination. No child who had a disciplinary record would be eligible to attend an integrated school. This was the plan submitted to the district court on June 1, 1960.

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[124] *Id.* at 2.

[125] *Id.* at 4.

[126] *Id.* at 5.

During the spring of 1960 some organized opposition to holding the referendum election had developed. Representatives of the Houston Association for Better Schools (HABS), a private biracial organization whose membership consisted of some 500 families, the majority of whom were white, urged Superintendent McFarland and the school board to make a clear statement of the purpose of the referendum and to clarify the question of possible loss of State funds. They expressed the view that the referendum would not affect the board's obligation under the Federal court order and would be a waste of taxpayers' money. They further said that an election at that late date would arouse adverse public sentiment which might result in disorders when a desegregation plan was put into operation. When these efforts failed, HABS attempted to enlist support for an affirmative vote on the desegregation question. A large number of civic, professional, and church organizations were approached unsuccessfully. The community leaders seemed to be indifferent and declined to assume leadership on this issue. The only organizations which supported HABS in its efforts were the American Friends Service Committee and a Negro group, the Council of Organizations.

Almost singlehandedly, HABS undertook a campaign for public support of the referendum. Working on a very limited budget, it prepared over 200,000 leaflets, and distributed them primarily in the downtown area during business hours. Its appeal was for acceptance of the Supreme Court's mandate through an affirmative vote in the referendum election. The fact that no complaints or objections were made to the persons distributing the leaflets was taken as evidence of general public apathy on the issue.

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127. See Borders v. Rippy, 184 F. Supp. 402 (N.D. Tex. 1960).

128. Minutes, May 30, 1960, p. 8.

These efforts were supported by one member of the school board. On the date of the election, Dr. W. W. Kemmerer issued a statement in which he pointed out that the decision to desegregate had already been made and that an affirmative vote would not affect desegregation but would avoid additional litigation. He would cast an affirmative vote, he said, because be believed that compulsory segregation was morally wrong, because a negative vote would make the desegregation of the schools, required in any case, more difficult for emotional reasons, and because an affirmative vote would automatically avoid the penalties of the State law.[129]

There was virtually no organized support for a negative vote, except perhaps from the school board itself. In a statement published on June 4, Mrs. Frank G. Dyer, a member of the "conservative" majority of the board, stated that the issue was not one of money or accreditation, but merely whether the qualified voters wanted to maintain a dual system of schools or to authorize the board to abolish the dual system and mix Negroes and whites in the schools. "If it is only a minority who favor racial mixing, my duty under the state law is . . . clear--to see, to the best of my ability, that no child is forced into a mixed school against his family's wishes," she stated.[130] She would vote against desegregation, because:[131]

> As a free American citizen I have the right to continue to express my disapproval of federal interference in the operation of our schools and to hope that by such expression I may help at some future date to modify or change the decision of the Supreme Court of the United States which has precipitated our problem and which, if not so changed or modified, can downgrade, and even destroy, our public school system.

The result of the referendum was encouraging to advocates of both positions. Whereas in 1956 the vote against desegregation had been 4 to 1,[132] the 1960 referendum resulted in a majority of only 2 to 1 against desegregation.[133]

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[129] See Houston Post, June 4, 1960, sec. 1, p. 1.

[130] Ibid.

[131] Ibid.

[132] See dicussion p. 10 supra.

[133] A total of 87,376 votes were cast; 57,958 voted "against integration," and 29,418 voted "for integration". Apart from the predominantly Negro residential areas, opposition to desegregation was lowest in the southwestern part of the city where the Negro population was small. See Houston Post, June 5, 1960, sec. 1, p. 1.

At least, it seemed there was a lack of strong feeling on the part of the community as a whole, and many felt that desegregation could be expected to take place without violence as long as no effective leadership from prosegregation elements developed. Most of the school board members expressed no surprise at the outcome and said that it demonstrated that the board should do all possible to hold integration to a minimum.[134]

## THE PLAN AND THE REACTION

The Federal district judge stood by his earlier warning against an area-system plan. On August 3, 1960, the court found that the plan submitted by the school board did not constitute compliance with its previous order or a good faith attempt at compliance, but was a "palpable sham and subterfuge designed only to accomplish further evasion and delay."[135] The court then ordered the school board to desegregate the Houston public schools a grade-a-year commencing with the first grade in September 1960 and the next higher grade each year thereafter until complete desegregation was accomplished in 1972. The separate system of geographical attendance zones for the white and Negro schools was left intact, and each student entering a desegregated grade was given the option of attending either the formerly all-white or the formerly all-Negro school of the zone of his residence. The court order further authorized the board to transfer a student "at his request, or pursuant to reasonable transfer rules promulgated by the school authorities, provided only that, in the latter case, the color or race of the student concerned shall not be a consideration."[136]

Since, under the court's plan, desegregation was to commence in the "first grade" in 1960 and was to be completed in 1972 with desegregation of the 12th grade, confusion immediately arose over the status of kindergarten. School officials quickly interpreted "first grade" as meaning the first year in the school system, that is, kindergarten, and started making preparations for desegregation at that level. This interpretation was apparently motivated by two considerations. In the first place, the district faced the possibility of losing State funds under the terms of the referendum law, since the voters of the district had failed to approve desegregation in the June 4 election, and the State Commissioner of Education had said that if the district integrated, even under the court order, he would be required to withhold State funds. The district received no State financial support for the kindergarten, however, and the school authorities argued that, if only kindergarten were desegregated that year, there would be no reason to withhold funds from the still segregated grades for which State funds were received. Secondly, since fewer Negro children attended the noncompulsory kindergarten than attended the first grade, the impact of desegregation would be less by commencing at the lower level.

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[134] See Houston Post, June 5, 1960, sec. 1, p. 18.

[135] Ross v. Peterson, Civ. No. 10444, S.D. Tex., Aug. 3, 1960, 5 Race Rel. L. Rep. 709 (1960).

[136] Ibid.

Attorneys for the Negro plaintiffs promptly objected to this interpretation, insisting that the court's order envisioned a 12-year plan commencing with grade 1.

In view of this confusion the district court on August 12, 1960, issued a clarifying order defining "first grade" to mean "the first of the six regular grades of elementary school, and as distinguished from the kindergarten ."[137] No other specific reference to kindergarten was made in this order, but as the last step in the grade-a-year plan, it provided for the desegregation of "any grade or class not heretofore specifically referred to (if there be such)"[138] in September 1972. Although the plaintiffs' attorneys apparently did not realize it at the time, this postponement of the desegregation of the kindergarten was to have a significant effect on the number of Negro students who were to be admitted to white schools.

The court's order to commence desegregation the following month apparently took many by surprise. Superintendent McFarland stated that the Houston schools were not prepared to integrate, and some school administrators expressed the opinion that residents of the city were not "conditioned" for the change. Not immediately recognizing the effect of the order, Dr. McFarland cited the school zone boundaries as one of the problems. It had been assumed that any plan of desegregation would require abolition of the dual system of school attendance zones for the white and Negro schools, at least in the desegregated grades, and the difficulty of accomplishing this, especially while the elementary school building program was in progress, was one of the school board's principal arguments for delay. By August 1960, the office of the district's director of census and attendance

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137. Ross v. Peterson, Civil No. 10444, S.D. Tex., Aug. 12, 1960, 5 Race Rel. L. Rep. 709, 710 (1960).

138. Ibid.

had devoted over 2 years to drawing up new boundaries for the elementary schools which would eliminate the dual set of attendance zones, and it was announced that under the revised boundaries no more than 400 Negro first-grade pupils would attend formerly all-white schools.[139]

The position of the district's Negro teachers also came up for question. At a meeting on August 8, the school board approved the hiring of all new Negro teachers for the year 1960-61 under temporary rather than regular contracts, thus enabling the board to terminate their employment in the event a large number of Negro students entered white schools. It was reported that 74 Negro teachers were hired on this basis, 11 of whom were assigned to teach the first grade.[140] The need for this action, even to protect the district against a possible reduction in the number of Negro teachers required to staff the Negro schools, seemed doubtful. Nevertheless, on April 11, 1960, the board had resolved to insert in notices of appointment and contracts for teachers an escape provision allowing cancellation of any contract "in the event that the need for such specific assignment becomes unnecessary in the opinion of the Board."[141]

The board did not long delay in reacting to the desegregation order, and a special meeting was held on August 15, 1960, "to take such action as the Board deemed necessary with relation to problems attending desegregation." The majority on the board clearly agreed with the president's statement that, since the voters of the district had expressed themselves against integration, "we as a Board of Education should, I think, comply with their wishes if at all possible."[142] In keeping with this sentiment, the board resolved to appeal the district court's order and to request a stay of execution. On the contingency that those steps might fail, the superintendent and the board's attorney were authorized to take whatever action might be necessary, including the filing of a lawsuit, to prevent loss of State accreditation and funds.

In anticipation of the first step under the desegregation plan, the board also adopted, on the recommendation of superintendent McFarland, four criteria for the admission of students to the first grade. First, all students

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[139] See Houston Post, Aug. 5, 1960, sec. 1, p. 7.

[140] Id., Aug. 9, 1960, sec. 1, p. 1

[141] Minutes, April 11, 1960, p. 62.

[142] Id., Aug. 15, 1960, p. 8.

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entering the first grade at a school which they had not previously attended would be required to have a thorough medical examination. Second, if there were two or more children in a family eligible to attend any of the seven grades of elementary school, they would all be required to attend the same elementary school except in case of assignment of a particular pupil to a special education class. Third, any student who had previously attended kindergarten or first grade in a Houston public school for as much as one-half day would be required to secure a transfer in order to attend any school other than the one he had previously attended, for which written recommendations from the principals of both the sending and receiving school and the written approval of the director of attendance, census, and transfers would be required. It was stated that application cards with spaces for the reason for the transfer and for the signatures of the three officials whose approval was necessary were available in the census-attendance office. Although no criteria for the approval of transfer requests were established, it was provided that no student would be denied a transfer solely on the basis of race or color. Fourth, if during the course of the school year any first-grade student failed "to measure up to the achievement level of the class" which he had been attending, he might be transferred to a class in another school.

The reason for adopting these criteria at that particular time and the motives behind them were made clear, primarily through questions posed by board members Dr. W. W. Kemmerer and Mrs. Charles E. White. Since the special meeting had been called for the sole purpose of receiving the district court's order and taking action with relation to problems attending desegregation, Dr. Kemmerer asked what connection the criteria for admission of first-grade students had to the purpose of the meeting. The president, Dr. Henry A. Peterson, was frank: "Dr. McFarland is right anxious to have approval of these criteria in order that they could have some basis on which to effect integration in compliance with the Order," and further, "these recommended criteria Dr. McFarland would like to have authorized if we have to have integration by September 1."[143]

Having established that the admission criteria did concern desegregation, Dr. McFarland was hard pressed to give plausible reasons for some of his recommendations, even with some assistance from the board's attorney, who also was present and had assisted in the preparation of the recommended criteria. The purpose of the medical examination requirement was "that the children specified would have the benefit of a medical examination,"[144] even though the

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143 *Id*. at 16.

144. *Id*. at 18.

children attending a school which they had previously attended would not have had such an examination. The so-called "brother-sister rule" was also for the benefit of the students, Dr. McFarland pointed out, since the older children in a family frequently take care of their younger brothers and sisters on the way to school, teachers frequently want to send messages home by the older children rather than by the younger ones, and furthermore, there are a number of occasions and a number of reasons why it is advantageous for a younger child to attend the same school as his older brother or sister."[145] Dr. Kemmerer's analysis that the rule was designed to exclude from white schools Negro first-grade children who had older brothers and sisters in grades not yet desegregated was not denied, and his statement that the rule invited further litigation was more prophetic than he perhaps realized. With respect to the transfer rule, it was needed for the elementary schools, the superintendent explained, "because it has been a good policy in secondary schools."[146] The fourth recommendation was justified as "an effort to support the instructional program of the School District and to maintain as high a level of achievement as possible."[147]

Having established this plan of "controlled" desegregation,[148] the board proceeded further to attempt to block the district court's order. Faced with a deadline of September 7, the date on which the schools were scheduled to open for the 1960-61 academic year, the board's attorney made a race against time. A notice of appeal and an application for a stay of the district court's judgment, on the ground that the order did not allow sufficient time for preparation for desegregation, were quickly filed with the Court of Appeals for the Fifth Circuit. On August 26 that court denied the application, and on September 1 a similar request was denied by the United States Supreme Court.[149] Although refusing to stay the lower court's order, the court of appeals agreed to hear the appeal on its merits on September 6, the day before the schools were scheduled to open, and on the same day it affirmed the judgment of the district court.[150]

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[145] Id. at 20.

[146] Ibid.

[147] Id. at 22.

[148] The reporter has borrowed this term from a member of the "conservative" majority on the school board, who used it in referring to the admission criteria adopted by the board.

[149] Houston Independent School District v. Ross, 364 U.S. 803 (1960).

In the meantime, the board met on August 30 in special session to make one more stand in its fight to preserve school segregation. The president of the board posed the question:[151]

> We have come at last to this extremity and to this question: Shall this Board of Education be governed by the laws of the Sovereign State of Texas and those powers reserved to it and to the people by the 10th Amendment of the Constitution, or shall this Board acquiesce, reject such States rights as are provided by the Constitution and accept the impractical solution ordered by the Federal District Judge in compliance with the most recent interpretation of the 14th Amendment as expressed in the decision of May 17, 1954?

The board thereupon adopted a resolution prepared by its attorneys and directed to Governor Price Daniel, reciting its opinion "that to effectuate the integration of white and Negro children at the first-grade level of the System would seriously impair the educational opportunities of both races," and declaring that they could not "conscientiously undertake the same and will do so only under the imperative compulsion of the order of the Federal Court over which your executive authority extends."[152] The board, "having exhausted all of its resources to maintain its school system in accordance with the vote of the citizens of the Houston Independent School District and the State of Texas," appealed to the Governor "to interpose the sovereignty of the State of Texas under the 10th Amendment to the Constitution of the United States against such unwarranted acts on the part of the Federal Government and its officials."[153]

This final legal maneuver promptly failed. The following day, August 31, Governor Daniel replied that the State had no power under Supreme Court decisions to interpose between the Federal Government and the school district and that he would take no action on the request.

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150. Houston Independent School District v. Ross, 282 F.2d 95 (5th Cir. 1960).

151. Minutes, Aug. 30, 1960, p. 24.

152. Id. at 26-27.

153. Id. at 27-28.

Every conceivable legal move to prevent or at least to delay desegregation having failed, the board met on Tuesday, September 6, to take action to comply with the order of the district court. The board no longer had reason for concern over the possible loss of State accreditation and funds; on that same date Attorney General Will Wilson had issued his opinion that the penalties of the referendum law did not apply since the dual system of schools in Houston had been abolished by judicial decree and not by the board or other school authority.[154] The superintendent was instructed to receive all applications of first-grade students of one race desiring to enter a school of the opposite race, and to determine whether or not they met the requirements for admission established by the board. Each applicant was to be notified "as to his placement" not later than the following Friday, September 9.

## THE PLAN IN OPERATION: STATISTICS AND DYNAMICS

Fortunately for the efficient operation of the schools, administration officials had not waited for formal authorization from the board to start making preparations to put the plan into effect. Registration for kindergarten and first grade was rescheduled for Tuesday, August 30, through Friday, September 2, 2 days longer than had previously been planned. On Monday, August 29, Superintendent McFarland held a meeting with elementary school principals to instruct them on the desegregation order, the newly adopted admission and transfer requirements, and the procedure for handling Negro applicants. Applications from Negro students who apparently qualified for admission to white schools were to be accepted, but the applicants were to be advised that they would be notified the following week, when a decision on the appeal of the desegregation order was expected, whether or not they had been enrolled. The principals were cautioned not to disclose information on Negro applicants, but to reply to anyone who might ask that a Federal court order prohibited them from inquiring into the race of any applicant for enrollment. The superintendent's office was to be notified immediately upon receipt of any application from a Negro pupil, however.

Precautions were taken to avoid encounters between white and Negro parents during the registration period and to expedite processing of applications. Elementary school principals were returned to duty several days earlier than usual to enable them to complete routine work so that they would be free to devote full time to the registration of new applicants. Additional teachers were employed, at least in the schools where Negro applicants were considered possible, to assist with registration and minimize the waiting time for white parents. Separate rooms were provided for Negro parents and children in order to avoid possible tensions in the waiting areas provided for whites.

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[154] See discussion p. 18 supra.

The registration period passed without incident. Negro parents who appeared to enroll their children in white schools were advised of the requirements for admission, and applications were taken from those who apparently qualified. Where it appeared that a child was not eligible under the admission and transfer rules, the parents were advised of this and were not allowed to make formal application for enrollment of their children.

Formal applications for admission were forwarded by the elementary school principals to the office of the superintendent, where a reviewing committee of high-ranking school administrators had been established to examine all applications and to make the final determination of eligibility for admission to white schools.

The number of Negro parents who attempted to enroll children in white schools is not certain. By Thursday, September 8, the local newspapers reported that 22 applications had been submitted at five white schools;[155] school authorities said there were only 19 applications during the entire year. Apparently, neither figure includes all Negroes who appeared at white schools with the intention of registering their children, and a Negro leader in close contact with the situation has stated that at least 45 Negro parents reported attempts to enroll their children in white schools. It seems true at least that a number of inquiries were made at white schools as to the requirements for admission of Negro children and that records were not kept by the school officials of these inquiries or of attempts to enroll where the admission requirements were obviously not met.

The Houston public schools opened for classes on Wednesday, September 7, 1960. Applications of Negro pupils for admission to white schools were still under consideration by the school administration and it was stated that they would not be acted on until the following Friday. However, on Thursday, September 8, the first Negro child to attend a formerly all-white school was admitted to class, without advance announcement by the school administration. On Friday, September 9, five more Negro students were admitted to previously all-white first-grade classes, and by the end of the month a total of 12 Negro children were attending classes with white students in three elementary schools. Seven of these students were enrolled in Kashmere Gardens Elementary School and four in Ross Elementary School, both located in northeast Houston. One Negro child was admitted to MacGregor Elementary School, in the southeastern quadrant of the city. All three schools are near areas of heavy Negro concentration and in neighborhoods which were in transition from white to Negro.

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[155] See Houston Post, Sept. 8, 1960, sec. 1. p. 1.

The initial step in the desegregation of the Houston public schools was achieved without incident. Although it seems to be generally admitted that a real possibility of violence existed, virtually no attempts were made to prepare the community for acceptance of the change and there was no evidence of affirmative leadership from any responsible segment of the population. The police were prepared to act in the event of any difficulty, but no publicity was given that fact. Civic and business leaders seemed to have taken the position that "the less said, the better," and remained in the background. Even the school officials themselves refused to the very end to accept the desegregation order in good grace and make a plea for orderly compliance. Quite to the contrary, the defiant attitude and statements of the president and other board members at televised meetings of the board and to the newspapers might well have been taken as encouragement by radical prosegregation forces to create further confusion and make the change more difficult. On the very day of the opening of the schools the board's attorney had made an appeal by telephone to the Federal district judge, who was then sitting in Laredo in south Texas, for a stay of his order, and a private airplane was standing by to take the attorney, the superintendent, and the board vice president to Laredo for a personal plea to the judge in the event of any threat of violence.

Only one of the city's two leading newspapers had taken an editorial position on the desegregation order, pointing out that the community should recognize that the Federal court could no longer delay ordering desegregation and expressing a hope that "all citizens will co-operate so as to make this profound change in the customs of this community as free from trouble and friction as possible,"[156] but this had been published over a month before the beginning of the school year. The other leading newspaper remained completely silent.

Although the newspapers reportedly had agreed not to be sensational in their coverage of the opening of the schools and refrained from sending reporters to the schools, themselves, they published full details, furnished by the school administration, regarding Negro applicants, including the names, parents' names, and addresses of those who were admitted to white schools and the names of the schools involved. It would have been easy for prosegregation elements to attempt to retaliate against Negro parents who dared to take the first step.

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[156] Houston Chronicle, Aug. 5, 1960, sec. 1, p. 14. The city's third newspaper, The Houston Press, also assumed some editorial leadership shortly after the desegregation order was issued: "It is our belief the majority of Houstonians feel as we do that Judge Connally's Order is a moderate and reasonable settlement of this hotly controversial issue and one with which we all can and must learn to live."

Under these conditions the lack of incidents is notable. Superintendent McFarland expressed surprise: "This is a real achievment. I don't think anybody in the nation expected us to desegregate this school system without incident --including us."157 Although the board president, Dr. Henry A. Peterson, voiced relief he also reportedly stated that integration was a failure of the representative form of government. The vice president gave credit to "the good judgment and understanding of our Negro parents and children."158

A more plausible explanation is that the attitude of the community as a whole, though generally opposed to desegregation, was not sufficiently strong to motivate disobedience and disorder, and the radical segregation forces lacked community encouragement and support. The great majority of the white community by 1960 seemed to accept the inevitability of desegregation, and were not disposed to see Houston become another Little Rock. Regardless of the reasons, it is a credit to the citizens of Houston, rather than the officials of its school district, that desegregation was accepted in a spirit of respect for law and order and the constitutional rights of others.

The second and third years of the operation of the desegregation plan saw some increase in the number of Negro students in formerly all-white schools.

Under the court-ordered plan both the first and second grades were required to be desegregated with the opening of the schools in September 1961. The procedure for receiving and processing applications from Negro students for admission to white schools was basically the same as the prior year. During the 2-day period for the registration of students who had not previously attended the school to which they sought admission, applications from Negro pupils were taken by the white school principals, who eliminated those which obviously did not qualify and forwarded the remaining applications to the superintendent's office for final approval or disapproval on the basis of the requirements for admission and transfer. The names and addresses of Negroes making application and the schools to which they sought admission were furnished to the local newspapers, which published full details.

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157. Houston Post, Sept. 8, 1960, sec. 1, p. 1.

158. Ibid.

Again, the exact number of new applications for admission to white schools made on behalf of Negro students is not certain. During the registration period 23 applications were reported, but it has been estimated, by an interested observer in close contact with the situation, that by the end of the first 2 or 3 weeks of school a total of some 50 applications had been received. Of the Negro children seeking admission for the first time to white schools during the 1961-62 year, 22 were admitted. Eleven of the 12 Negro students who had attended the first grade in white schools the prior year were readmitted to the schools which they had attended, making a total of 33 Negro students in desegregated classes.[159]

By far the greatest number of Negro children, 21 or 22, were in Kashmere Gardens Elementary School, and 7 or 8 were enrolled in Ross Elementary School.[160] One new application was accepted at MacGregor, giving that school two Negro pupils. The only school to receive Negro students for the first time in September 1961 was Bowie, located in the northeast section of the city in the same general area as Kashmere Gardens and Ross, where one Negro child was admitted to each of the first two grades.

The commencement of the 1962-63 school year saw the addition of the third grade to the two grades previously desegregated. Again, the procedure for receiving and processing new applications on behalf of Negro children for admission to white schools was basically the same as in the prior years. The school administration was more successful in its efforts to encourage registration of new students during the 2-day period provided for that purpose the week before the opening of the schools, and it was reported that virtually all the applications from Negro students for admission to white schools for the first time were submitted during that period. The school administration continued to maintain a close watch on attempts by Negro students to obtain admission to white schools, and additional teachers were employed to assist in registration in schools where Negro applicants were expected. For the first time, student enrollment cards called for information as to race, apparently to facilitate identification of the increasing number of Negro applicants. The local newspapers continued their practice of reporting full details on the Negro applicants.

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159. The parents of one of the 12 Negro students who had attended white schools during 1960-61 enrolled him in a Negro school.

160. The exact number of Negro students enrolled in Kashmere Gardens and Ross is not known. As of Sept. 21, 1961, Kashmere Gardens had 21 and Ross had 7. An additional Negro pupil was admitted later to one of these two schools.

Of the 34 new Negro applicants reported for this year, 32 were admitted to white schools. The small number of denials was explained by one school administrator on the ground that by that time the requirements for admission and transfer were well known, few Negro parents who were not confident that they had fulfilled all the qualifications made application for admission of their children to white schools. It is also possible that some attempts to apply by Negroes who could not qualify were discouraged at the local school level and were not reported as applications. All the 33 Negro students who had been enrolled in desegregated classes the previous year were readmitted to the schools which they had attended, making a total of 65 Negro pupils in six white schools.[161]

As in the prior year, most of the increase in Negro enrollment was in two schools: Kashmere Gardens Elementary School had a total of 35 Negro students, and 19 were enrolled in Ross Elementary School. No new Negro students were admitted to MacGregor or Bowie, both of which readmitted the two Negroes who had attended each of those schools the previous year. Two white schools were added to the small list of schools with desegregated classes. Six Negro children were enrolled in Allen Elementary School, on the north side of the city; and perhaps the only Negro child of first-grade age living within its attendance area was admitted to Will Rogers Elementary School, which is located in the southwestern section of the city where the population is overwhelmingly white.[162]

In the 1962-63 school year there was a total enrollment in the first, second, and third grades in the Houston public schools of approximately 61,800. Since at least 29 percent of the enrollment in those grades, or some 18,000 were Negro, and only 65 Negroes attended previously all-white schools the token character of desegregation is apparent. Only slightly more than one-third of 1 percent of the Negro students in the city eligible to attend desegregated classes did so.[163] At the end of the third year of operation of the

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161. For the location of the six "desegregated" schools see map 2. In using the term "white" schools in this report with reference to schools having desegregated classes, the reporter is following the classification used by the Houston school district.

162. According to statistics prepared by the census and attendance department of the Houston school district, only one Negro 5-year-old child lived in the Rogers attendance area in May 1960.

163. School officials would doubtless take issue with this statement since many of the Negro students in the first three grades were not "eligible" to attend white schools under the requirements for admission established by the school board.

desegregation plan only a few of Houston's Negro children were receiving an education equal to that of the white children.

The small number of schools having desegregated classes and their size as compared with neighboring Negro schools are also of interest. According to information compiled by the census and attendance department, in May 1960, 15 of the 102 white elementary schools had more than 100 Negro 5-year-old children residing within their attendance districts, but Negro students were enrolled in only 4 of these schools in the 1962-63 school year. Since by that time there were probably at least 25 white elementary schools having more than 100 Negro children of first, second, and third grade age within their attendance areas, the small number of schools to which Negroes had been admitted is surprising.

Furthermore, while the total enrollment in each of the five white schools having more than one Negro student enrolled in 1962-63 has decreased substantially over the past few years (with the exception of Allen Elementary School, in which enrollment was only four less in October 1962 than in October 1960), the enrollment in most of the Negro elementary schools in the same areas increased substantially. There is also a significant difference in the total enrollments in the five white schools to which more than one Negro has been admitted and their neighboring Negro schools. The average total enrollment in the five white schools in October 1962 was approximately 430, having declined from an average of 632 in 1957 and about 490 in 1960, while most of the neighboring Negro schools had 1962 enrollments of well over 1,000, exceeding 1,700 in one school.

An attempt to explain some of the reasons for these statistics is made below under the heading Factors Influencing Desegregation.

## EXPERIENCES IN THE DESEGREGATED SCHOOLS

As in the community in general, desegregation seems to have worked unusually well in the schools themselves. Fears expressed by school administrators that the community was not prepared for desegregation have not been borne out. Not a single white child in a desegregated class or school has been withdrawn or transferred by his parents as a result of the admission of Negroes, nor have there been serious complaints from white parents.[164] Although enrollment in most of the desegregated schools has declined steadily in the past few years, this is probably due to changing residential patterns in those areas rather than to specific objections to racial mixing in the schools.

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[164] The only instance reported by school authorities of withdrawal of a white child was prior to the opening of the schools in September 1962, when a white father withdrew his child from a school to which he feared Negroes would be admitted, although none had been enrolled up to that time.

Desegregated classes have been placed under competent and willing teachers who have shown no hostility toward Negro pupils. Most teachers have evidenced real concern for the welfare of the Negro pupils, and some have gone beyond what might reasonably be expected of them in assisting the children. Among the students themselves, the Negroes seem to have been accepted largely without question, and incidents of harassment have been few. Although at least one school administrator had predicted that physical education activities in which children danced together would be dropped from the elementary school program, Negro children have participated fully in May fetes and other school activities. Relations among the parents have likewise been at least polite. Many Negro parents have participated and been well received in PTA activities and other school programs. One Negro patron of a white school was elected a representative to the PTA City Council of the white schools.

Academically, it has been reported that Negro students in desegregated classes have, on the whole, been able to compete with their white contemporaries and have performed satisfactorily. Some school authorities take this as evidence that there has been "self-selection" within the Negro community and that enrollment has been sought in the white schools only for children reasonably certain to succeed scholastically.

Despite the evidence of acceptance of desegregation by white students in the classes involved and by their parents, the school administration persisted for some time in maintaining a barrier to complete desegregation even at the classroom level. At the beginning of the first year of desegregation, the principals of the schools to which Negro students had been admitted were instructed to provide toilet facilities for those students separate from the facilities used by their white classmates. Although this practice was followed during the 1960-61 school year, it did not come to public notice until the second year of desegregation, when the parents of a first-grade Negro child at MacGregor Elementary School discovered that their child, a boy, and a Negro girl in the second grade were required to use the same restroom, which was separate from that used by white students. The parents, the president of the MacGregor PTA, and board member Mrs. White separately made inquiries of Superintendent McFarland, who replied that assignment of toilet facilities was his responsibility and that the policy was for the protection of the children and would not be changed. A petition by the Negro parents for permission to present their complaint directly to the school board was denied. A formal request to the superintendent on behalf of the MacGregor PTA that the segregation of toilets be eliminated as unnecessary and undesirable at that school was not answered. Within the next few days, the second-grade class was moved to a temporary building on the school grounds having a separate toilet, and the two Negro children no longer used the same facilities; each had his own segregated restroom.

The policy of requiring segregation of toilet facilities was abandoned in the fall of 1962, the third year of desegregation; the number of classrooms having separate toilets was limited.

During the first year of desegregation attempts were also made to isolate the classes with Negro pupils from other classes in the white schools. The desegregated classes were taken to the lunchrooms before the others, and either separate play periods were assigned to those classes or they were taken to separate areas on the playgrounds. These measures were justified as a precaution against possible white agitation and were reportedly abandoned within a short time when no such agitation developed.

Although the reception of Negro students in the lower elementary grades by both white students and parents has been exceptionally good, some school authorities feel that difficulties among students of different races are more likely to arise as the desegregation plan progresses into the higher grades, in which there are more social activities. Other observers see little reason to believe that there will be friction among the students, even at the high school level, pointing to instances in which white and Negro high school students have worked together without difficulty on projects such as the Mayor's Youth Council, a biracial group of teen-agers appointed to discuss juvenile problems in the city. Despite the fears expressed by school authorities, it is believed that by the time desegregation reaches the high school level, some degree of racial mixing in the classrooms will be accepted by the great majority of white students, and although social mixing to any extent is not likely, there should be no more friction than there has been in the elementary schools.

## FACTORS INFLUENCING DESEGREGATION

Although it is impossible to pinpoint all the reasons for the small Negro enrollment in white schools in Houston, many factors are readily perceived and others have been suggested by interested observers.

Members of the school board have interpreted the enrollment statistics as evidence that the great majority of Negroes do not really want to attend schools with white students, but merely desire the right to do so, and that the Negroes in Houston know that they are provided with good schools. It is undoubtedly true that many Negro parents have been unwilling to act as crusaders in placing their children in unfamiliar and possibly hostile surroundings and that much of the continued segregation is self-imposed.

Some degree of self-segregation on the part of Negro parents the first year of desegregation may perhaps be explained by the fact that the district court order was issued less than a month before the registration period for the 1960-61 school year, and the subsequent legal battle to have it reversed undoubtedly made for confusion and misunderstanding in the Negro community. Moreover, initially there seems to have been little effective Negro leadership to educate Negro parents as to the rights of their children under the Federal court order and the procedure for fulfilling the requirements for admission and transfer to the white schools imposed by the school board. There has been some effort to overcome this situation. In October 1961 a group of over 80 leading Negroes in the city organized the Citizens School Committee to render financial and other assistance to Negro parents who seek to enroll their children in white schools. However, the fact that there were apparently no more Negro applicants for admission to the white schools in 1962 than in 1961 suggests that the efforts which have been made to date to overcome the reluctance of many Negroes to enroll their children in white schools have not had substantial effect.

It has been alleged by members of the Negro community that the number of Negro applicants to white schools the first year of desegregation was further limited by the fact that some Negro principals and teachers approached parents in their school attendance districts before the official registration period and obtained commitments from them to enroll their first-grade children in the Negro schools. The accuracy of this allegation is not known, but it is understandable that the Negro principals and teachers would not wish to see a decline in enrollment in their schools and the threat to their job security which that might imply. No such complaints of early enrollment of Negro pupils in 1961 or 1962 have been made.

One explanation offered by Negro leaders for the reluctance of many Negro parents to seek enrollment of their children in white schools has been the fear of possible job loss and other economic reprisal against those who press for equal rights. It was claimed, for example, that many employers or supervisors of Negroes have subtly discouraged enrollment of their children in white schools; it was also claimed that most of the Negro parents who enrolled their children in white schools were employed in large industries where they had the protection of union membership, or in government jobs, or were self-employed.

Only two examples were given to support the contention that such a fear exists. At the end of the 1960-61 school year, officials of the Northeast Houston Independent School District, adjacent to the Houston district, refused, without giving any reason, to renew the contract of a Negro teacher who had enrolled her son in a white school in Houston in September 1960. However, the teacher had been under contract with the Northeast Houston district only 1 year, and the fact that her discharge followed the enrollment of her child in a white school may have been entirely coincidental.

The other example cited involved a Negro who for many years was principal of a combination junior-senior high school in the city. Although he was reportedly unusually competent in this position, when a new Negro senior high school was built to serve the area and his school was made a junior high school, he was refused the customary appointment as principal of the senior high school. Appeals were made to the school board on behalf of a number of Negro parents, but the board refused to reconsider the matter. It seemed to be generally accepted that the board's action was motivated by the principal's outspoken position favoring desegregation in the public schools. One board member described him as an "agitator" who, by fomenting pro-integration feelings, was not fulfilling his obligation to promote the welfare and best interests of the school district. This incident occurred in 1958, 2 years before desegregation, and it is difficult to believe that similar retaliation would be taken in 1963 against a Negro parent seeking to improve his child's educational opportunity by enrolling him in a white school. But the existence of the fear undoubtedly has had an influence on some Negro parents.

Although the considerations cited above unquestionably deter some Negroes from seeking admission of their children to desegregated schools, the difficulties of meeting the requirements for admission and transfer have discouraged or impeded many parents who would otherwise have taken the step. The effect of these requirements was emphasized during the first year of desegregation by a person described as a "ranking school official," who reportedly estimated that if the requirements for admission were abolished more than 1,000 Negro children could enter all-white first and second grades in September 1961.[165] Since there were well over 10,000 Negro first and second grade students in September 1961, this low estimate seems to have been based on an inaccurate interpretation of the court-ordered desegregation plan, under which all Negro students in desegregated grades have the right to attend a white school.

It has long been required that students entering the Houston public schools must present a birth certificate as proof of age, and must have been immunized against diphtheria and smallpox. Under the new admission requirements adopted by the school board in August 1960, a student entering the first grade in a school which he had not previously attended was also required to obtain a thorough medical examination. The reasonableness of this requirement cannot be questioned; however, it is difficult to understand why the rule was made applicable only to students entering the first grade at a school they had not previously attended, except for the fact that Negro pupils could not enter white schools at the first-grade level, since the kindergarten is not to be desegregated until 1972. That the requirement was directed specifically at Negro students has been verified by a majority member of the school board, who stated that the district's medical officers and white parents were concerned over the venereal disease rate among Negroes.

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[165] See Houston Chronicle, Oct. 23, 1960, sec. 1, p. 1.

Justifiable though these requirements may be, their use as a discriminatory device by requiring strict compliance of Negro children seeking admission to white schools, while not applying them in the case of Negro children entering Negro schools or white children entering white schools, is obvious. It has been alleged that this has been done in a few instances. For example, the case of a Negro second-grade student who was denied admission to a white school in September 1961 on the ground that she had not completed the series of diphtheria inoculations has been cited. It was claimed, however, that she was enrolled in the Negro school serving the area of her residence without objection.

A further example cited is that of two Negro children, of first and third grade ages, for whom enrollment was sought at the beginning of the September 1961 term at a white school to which no Negroes had been admitted. Because the parents did not have a birth certificate for the younger child with them, the principal of the white school allegedly told them to return on the first day of class. The Negro parents claimed that on their return to the school on the designated day, with the required birth certificate, they were advised that the maximum enrollment of 36 in the classes involved had been reached, and the principal referred them to the Negro school for that area. The parents made a telephone inquiry at the Negro school and were informed that there were over 36 students enrolled in the first and third grade classes at that school also. The father claimed that he then conferred with school administrative officials who told him that if he would enroll his children in a private school he would probably be able to register them in the white school the following year. In reply to a letter written on their behalf by an attorney to whom they took their complaint, the superintendent of schools denied that the principal had told the parents to enroll their children in the Negro school and that the classes in that school exceeded 36. He merely informed them, it was stated, that the Negro school bus made a stop near their home; and furthermore, because of the failure to present a birth certificate for the younger child when the parents first attempted to enroll their children in the white school, the principal could not consider the child an applicant for admission, and because of the brother-sister rule the older child could not be considered an applicant on that date either. After reciting these facts, the superintendent concluded: "In view of the above circumstances, we cannot enroll your children in [the white] school. You live in [the white] school district and in [the Negro] school district. You are eligible to enroll your children in [the Negro] school."[166] It is difficult to escape the interpretation that the Negro children could not be admitted to the white school because one of them failed to present a birth certificate on the day of registration, but could be admitted to the Negro school. It is possible, however, that the superintendent failed to express himself clearly.

Most denials of applications for enrollment of Negro students in white schools have been based on the so-called sibling or brother-sister rule, which provides that if there are two or more children in a family eligible to attend elementary school they must all attend the same school. It is claimed by school administrators that this rule had been in practice for many years prior to its adoption by the board in August 1960, and that there are valid reasons for the rule from an educational standpoint. It is further claimed that the rule is not discriminatory against Negroes, because it is applied equally to children of both races. It seems obvious, however, that the rule operates to exclude from desegregated schools otherwise eligible Negro children having brothers or sisters of elementary school age who are not entitled to attend white schools under the grade-a-year plan of desegregation.

Furthermore, as the rule was uniformly applied prior to 1960 in Houston, and as it is applied in most other districts where it is in effect, if affects only the younger children in a family by requiring that they attend the same school as their older brothers and sisters, thus once the eldest child in a family starts in a desegregated school the younger children would be permitted to follow suit. However, the language of the rule as adopted by the school board and the fact that the kindergarten grade continues to be segregated under the court-ordered plan allowed the school authorities to apply the rule in reverse so as to exclude from white schools even more Negro children than would be affected by the normal operation of the rule. Under this application, the older children in a family were required to attend the same school as their younger brothers and sisters, so that a Negro child otherwise eligible to attend a desegregated grade was ineligible to enroll in a white school if he had a younger brother or sister in kindergarten, necessarily in a Negro school. Kindergarten attendance is not compulsory in Houston, and some Negro parents sought to avoid application of the brother-sister rule to their older children by enrolling their younger children in private kindergartens or keeping them out of school. However, the rule adopted by the board stated that it was applicable not only in case of brothers and sisters actually attending public elementary school, but also where there were two or more children in a family eligible to attend public elementary school. Therefore, a 5-year-old child in a Negro family, merely because he was eligible to attend public kindergarten and regardless of whether or not he did so, prevented an older child in the same family from attending a white school.

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[166] Letter from John W. McFarland, Superintendent of the Houston Independent School District, to Reverend and Mrs. Therman Taylor, Sr., Sept. 10, 1962.

This application of the rule undoubtedly deprived many Negro children of the right to attend desegregated schools, but only one instance was brought to public notice. In September 1961, the second year of operation of the desegregation plan, a Negro student who had been admitted to the first grade in a white school the prior year sought readmission to that school to attend the second grade. He was declared ineligible to continue in the white school because he had a younger sister who by that time had reached kindergarten age and was thus eligible to attend public elementary school, even though she actually attended a private kindergarten. The parents of the child complained and, after receiving the advice of the school board's attorney, the superintendent announced that an exception was being made to the rule because the mother had enrolled the older child "in good faith" in the white school the prior year and had not understood the requirement. He made clear, however, that this was only an exception and that the rule was still in effect.

The third requirement adopted by the board in August 1960, the transfer rule, has also had the effect of discouraging the enrollment of Negro students in white schools. Again, this rule is defined on the ground that it is applied equally to Negroes and whites, but there is little doubt that in practice the rule operates as an unusual burden on Negro children seeking admission to white schools. This arises from the fact that the initial opportunity which Negro children have to attend desegregated classes is at the first-grade rather than the kindergarten level. If a Negro child has attended kindergarten in a public school, which must necessarily be in a Negro school, even for as little as one-half day, he must secure a transfer in order to attend a white school when he reaches the first grade. No such requirement applies, of course, to Negro children who continue in the Negro school or to white children who enter the first grade in the school where they were enrolled for kindergarten. White children are not likely to seek admission to the first grade of a Negro school.[167]

Although the mere existence of the transfer requirement imposes something of a burden on Negro students seeking to take advantage of the right accorded them under the court order, the procedure established for obtaining a transfer makes the requirement unusually burdensome. Since written approval is required from the principals of both the sendin school and the receiving school and from the director of attendance, census, and transfers, at least three trips mus be made to secure approval of a transfer request, and some Negro parents have complained that additional trips have been made necessary by school principals and administrators who have required that they return at a later date or have referred them first to another official. The time involved and the distances between the two schools and the downtown administrative offices prevent or at least discourage many Negro families from obtaining transfers for their children, especially where, as is frequently the case, both parents are employed.

Negro parents who have attempted to comply with the physical requirements of the transfer process have complained of further obstacles. As the procedure has been described by the superintendent of schools,[168] the two principals involved interview the Negro child seeking a transfer and his parents and take into consideration such matters as the comparative size of classes in the two schools, the academic situation of the student, and the distances between his home and each of the two schools. There is some indication that principals have refused to approve transfers on the ground that the Negro school was closer to the student's home than the white school, even though that is not a requirement under the desegregation plan.

The primary complaint has been, however, that many principals, both Negro and white, have attempted to discourage Negro parents from transferring their children to white schools by such means as pointing out the "advantages" of their attending school with members of their own race and, where there is a preschool age child in the family, by reminding the parents that the older children will no longer be eligible to attend the white school under the brother-sister rule, when the younger child reaches kindergarten age. Considering the high respect which Negro school principals usually command in the Negro community, and the fact that many Negroes, especially in the lower income brackets, are easily influenced by whites, these pressures have unquestionably been successful in many cases. The reluctance of Negro principals to lose students and of principals of white schools to accept Negro students may be understandable. It is not known whether or not these practices have been instigated or sanctioned by administrative officials. Indicative of the prevailing attitude, however, is a statement reportedly made by the superintendent of schools in September 1961 by way of explanation of the fact that some Negro parents had failed to complete the requirements for admission of their children to white schools: "One reason is, we don't push these people to come on and hurry in. We're not urging these people to go into a desegregated situation and we're not anxious to reopen those cases".[169]

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[167] However, there is reason to believe that some white families have attempted to enroll their children in Negro schools but have been refused. Dr. McFarland admitted at a school board meeting that some white children had indicated that they wanted to attend a "formerly all-Negro school," but that admission had been denied on the basis of the brother-sister rule. See Minutes, Jan. 14, 1963, pp. 24-25.

[168] See Record of hearing, Jan. 22, 1962, pp. 87-89, Ross v. Dyer, Civ. No. 10444, S.D. Tex.

The fourth rule adopted by the school board in August 1960, authorizing the transfer to another school of any first-grade student who failed "to measure up to the achievement level of the class," has not been applied, perhaps because other factors have proved adequate to limit the number of Negro students in white schools and because the few Negro students in desegregated classes have, on the whole, performed satisfactorily.

An additional reason which has been given in some cases for refusing to admit eligible Negro students to white schools has been that all the sections of the grade to which admission is sought have reached the maximum size permitted by school district policy. Although issue cannot be taken with a policy limiting the number of students enrolled in a class, it is doubtful that white students would be denied admission to the white school nearest their home on that ground. Furthermore, there has been complaint that classes in some Negro schools have been deliberately kept smaller than in neighboring white schools in order to furnish ground for refusing to admit Negro students to the white schools.

Among the factors which should be mentioned as having influenced the pace of desegregation of the Houston public schools is the effect of the district's dual geographical attendance zones for white and Negro schools. The court-ordered desegregation plan gives each child in a grade which has been reached under the plan the option of attending either the formerly all-white or the formerly all-Negro school within the geographical boundaries of which he resides. However, if a Negro child attends kindergarten in a public school, which must, until 1972, be a Negro school, he is in effect assigned to the Negro school at the first-grade level since that is the only school which he may attend without going through the rather cumbersome procedure for obtaining a transfer and submitting to the criteria such as comparative class size and academic achievement which are considered before a transfer is approved. The dual zoning system also enables the district to maintain its classification of schools as "white" and "colored," thus preserving race as a basis for distinction in the schools.

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[169] Houston Post, Sept. 21, 1961, sec. 1, p. 18.

The effect of a dual system of attendance areas has been noted by the three United States courts of appeals having jurisdiction over all but one of the Southern States. Each of those courts held that the constitutional rights of Negro school children and the Supreme Court's mandate to desegregate require elimination of dual school districts based on race.[170]

It is, of course, impossible to measure the effect of each of the obstacles and influences which have been mentioned on the progress of desegregation of the public schools in Houston. Considering their combined effect, however, it is perhaps not surprising that only 65 Negro children attended classes with white students at the end of the third year of desegregation.

## ADMISSION REQUIREMENTS IN THE FEDERAL COURTS

In the fall of 1961, after commencement of the second year of operation of the plan of desegregation, two separate motions were filed on behalf of Negro minors with the Federal district court in Houston, which had retained jurisdiction of the original action to compel desegregation, attacking as discriminatory certain requirements for admission of Negro children to white schools. One of the motions, filed on September 8, 1961, was for injunctive relief against the officials of the school district and sought to have the brother-sister rule and the transfer rule declared discriminatory and invalid. The second motion, filed October 12, 1961, on behalf of a single Negro child, sought to hold the defendant school officials in contempt on the ground that the plaintiff had been denied admission to a white school solely on the basis of her race, in violation of the court's earlier desegregation order. A joint hearing on both motions was held in January 1962.

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[170] Jones v. School Board, 278 F.2d 72, 76 (4th Cir. 1960). ("Obviously the maintenance of a dual system of attendance areas based on race offends the constitutional rights of the plaintiffs and others similarly situated and cannot be tolerated."); Augustus v. Board of Public Instruction, 306 F.2d 862, 869 (5th Cir. 1962), ("There cannot be full compliance with the Supreme Court's requirements to desegregate until all dual school districts based on race are eliminated."); Northcross v. Board of Education, 302 F.2d 818, 823 (6th Cir. 1962), ("Minimal requirements for non-racial schools are geographic zoning, according to the capacity and facilities of the buildings, and admission to a school according to residence as a matter of right.").

As to the motion for contempt citation, it was established that one week after the beginning of classes in September 1961, the Negro child had applied for and had been refused admission to the first grade at all-white Allen Elementary School, which served the area in which she resided and was the school nearest her home, and that she had been referred instead to the Negro school serving that area. The school authorities claimed that admission of the plaintiff to the white school had been denied on the ground that the first-grade classes had been filled and closed at the time of plaintiff's application, in accordance with school policy of limiting enrollment to 36 pupils per class, and not on the basis of her race. Counsel for the plaintiff relied on the fact that on the day following her attempt to enroll in the white school there were 15 first-grade sections in the district with more than 36 pupils, and even as late as the middle of December there were 11 such classes although none existed at the time of trial. He further introduced evidence that in October 1961 the assistant superintendent for elementary schools had stated that there was no official school policy limiting class size to 36, and further that some white first-grade students, who had sought admission to the school after the Negro plaintiff had been refused admission, had been permitted to enroll in a special section to await transfer to a regular first-grade class as vacancies occurred.

The district court found, however, that white children had been denied admission to the school because of class size both before and after admission was refused to the Negro plaintiff, and held that no discrimination had been practiced as to the plaintiff by virtue of her race. The court further noted that, since the semester beginning in September 1961 had ended and since the plaintiff could make timely application for future enrollment in the white school, the matter was moot.

In support of the allegation in the other motion that the brother-sister rule was discriminatory, either on its face or as applied, evidence was presented that two of the Negro plaintiffs had been denied admission to white schools because they had younger brothers or sisters eligible to attend kindergarten, even though they were not actually enrolled in public schools, and several had been denied admission to white schools because of older children of elementary school age in the same family. Counsel for the plaintiffs contended that this rule, when applied to a Negro family with children in segregated elementary grades and children in grades which had been desegregated, operated to discriminate against the latter by preventing them from attending desegregated schools.

With respect to the transfer rule, one Negro parent testified that, in attempting to secure a transfer for her child from a Negro school to a white school, she had talked with the principal of each school on two different occasions and to the assistant superintendent for elementary schools once before she finally enrolled her child in the Negro school. Each of those officials had allegedly stated that they could not issue a transfer, but failed to give any reason therefor. (Although it was established at the trial that the child did not live within the attendance district of the white school to which the transfer had been sought, it did not appear that that fact was known to the school authorities involved at the time of the request for transfer or that it was given as the reason for the denial.) There was also testimony that no approval had been required on a prior transfer between two Negro schools.

Both rules were defended by the school authorities on the ground that they had been followed for a number of years in the schools in Houston and in many other cities and were not adopted to circumvent the court's desegregation order, that they were sound educational and administrative practices and were applied equally to white and Negro children. The superintendent admitted, however, in connection with the transfer rule, that the approval of a transfer request depends greatly on the discretion of the principal of both the sending school and the receiving school, and that:

> /W/here there is an application for transfers from a school predominantly for Negroes to one predominantly for whites, I think that transfer is given more particular attention by all administrative officials involved in it. We are just bound, naturally, as human beings, to notice it more, and to be sure, as we would in every instance, that all requirements are fulfilled.[171]

On March 19, 1962, the district court issued its decision. Considering that the brother-sister rule had been in effect for many years and was a valid administrative measure, it found that it had not been promulgated to circumvent or evade compliance with the School Segregation Cases or with its earlier desegregation order. Although the court recognized that application of the rule would prevent some Negro

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171. Record of hearing, Jan. 22, 1962, p. 120, Ross v. Dyer, Civil No. 10444, S.D. Tex.

children from attending the school of their choice, it found no evidence that the rule had been applied in a discriminatory manner, in the sense that the rule was enforced as to Negroes but waived as to whites.

The court also found the transfer rule to be of long standing and supported by reason, logic, and sound administrative practices. In practice, it stated, the permission of the two principals was granted routinely in the absence of good cause for refusal, and the evidence failed to show that any transfer had been denied on account of race.

In conclusion, the court stated that "the colored plaintiffs do not seek the same treatment as is afforded white students, to which they are entitled; in fact, they seek a different, and superior treatment, by reason of their race. The law does not grant them this."172 The motions were denied.

During the course of the 3-day hearing, the Federal district judge expressed doubt as to the validity of the brother-sister rule when applied to exclude an older child who has a younger brother or sister eligible for kindergarten, who was not actually enrolled in kindergarten in a public school. In response to this, the school board immediately amended the rule to authorize the superintendent and the principals involved "to make exceptions to this rule in cases involving brothers or sisters of kindergarten age so as to relieve hardships and to promote the best interests of the child."173 However, this amendment did not appear to satisfy the judge, who pointed out that the superintendent already had the discretion to make exceptions to the brother-sister rule since he had done so in at least one instance, and he suggested that the board might wish to reconsider this aspect of the rule.

In order to satisfy the court's objection, the school board met in special session on February 5, 1962, and further amended the rule so as to exclude from its application an older child having a younger brother or sister eligible to attend kindergarten, but not enrolled in kindergarten in a public school. In an attempt to prevent further litigation over school board rules and policies, two additional resolutions were adopted by the board at the same meeting providing (1) that no policy, rule or regulation previously established or adopted by the school district should be construed or interpreted as a means of circumventing the Federal district court's desegregation order, and (2) that where any such policy, rule or regulation conflicts with that order, it shall be null and void.

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172. Ross v. Dyer, 203 F. Supp. 124, 126 (S.D. Tex. 1962).

173. Minutes, Jan. 22, 1962, p. 58.

On appeal of the district court's judgment as to the brother-sister rule, the Court of Appeals for the Fifth Circuit reversed the lower court and held that the rule, applied in the transition from a segregated to a desegregated school system, "preventing individual Negro children from enjoying the constitutional rights which the 1960 order in its gradual way undertook to afford,"[174] was discriminatory and invalid. The court noted that, even though the rule applied equally to white and Negro students:[175]

> [W]e think that logic alone is insufficient to overcome the practical effect of this rule which as to some Negro families perpetuates a segregated system despite the plain purpose of the stair-step plan to ameliorate it. That it applies equally to white and Negro overlooks the fact that as to one group, compulsory attendance at certain schools has been the result of unconstitutional discrimination.

Although no appeal had been taken of the district court's judgment insofar as it related to the transfer rule, the court of appeals commented on that rule also. Recognizing that transfers posed an administrative problem to Houston in view of the size of the district and the number of students moving from one zone to another each month, the court stated, nevertheless, that:[176]

> [A] serious problem of legality exists over vesting in one or both principals the power to grant or deny the application when the occasion for the transfer is to seek the benefit of the 1960 order giving each student the right "at his option" to "attend the formerly all white . . . school within the geographical boundaries of which such student may reside. . . ."

The court of appeals also took this opportunity to comment on the maintenance of separate attendance zones for white and Negro students. It was pointed out that, while the 1960 desegregation order of the district court did not expressly provide for the abolition of the system of dual zones, the court of appeals had recently "made plain that this is the imperative and ultimate result of a stair-step plan. 'There cannot'...be full compliance with the Supreme Court's requirements to desegregate until all dual school districts based on race are eliminated.'"[177] The court was even more specific in its dictum:[178]

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[174] *Ross* v. *Dyer*, 312 F.2d 191, 196 (5th Cir. 1963).

[175] *Id*. at 194.

[176] *Id*. at 195.

> Consequently, in the framework of the 1960 order the most remote date, so far as it now appears, for abolition of the dual zones in the elementary schools will be September 1966. . . . By this time the 6th grade will have finished its first year on the stair-step . . . . In the relatively short period of six years that problem /the transfer rule/ will also largely evaporate when students are initially assigned to a particular school wholly without regard to race or the traditional race status of such school during segregated days.

It is uncertain at this writing what action will be taken by the school board as a result of the decision of the court of appeals. No attempt to take an appeal to the Supreme Court was made, and the district court had not, at the date of writing, entered an order in compliance with the court of appeals' decision. At the direction of the board, the superintendent of schools, during the first week in July 1963, undertook a study and reconsideration of the rules relating to admission and transfer, and he expected to make his recommendations to the board on July 15. Obviously, the brother-sister rule can no longer be applied to prevent Negro children from attending desegregated grades in previously all-white schools. Whether or not any recommendation will be made to change the transfer rule as it applied to Negro children seeking admission to white schools is not known.

It seems obvious that the existing discriminatory practices stem primarily from two factors: first, the maintenance of the system of dual attendance zones based on race; and second, the fact that the kindergarten is still segregated and will continue to be, under the stair-step plan, until 1972. The board has shown no disposition to accelerate the pace of the court-ordered plan, and it is believed to be highly unlikely that the kindergarten will be desegregated voluntarily. It also seems doubtful that the board will take any action to eliminate the system of dual zones, in the absence of a court order requiring it to do so. The attorney for the school board dismissed the admonition of the court of appeals in this regard as dictum, and expressed the opinion that the court did not understand Houston's dual zoning system and the manner in which the desegregation order operated. Although admitting that dual zoning has been ordered abolished in other cities by the Fifth Circuit Court of Appeals, he has expressed the belief that the principles of those decisions were not applicable to Houston, and he stated that he foresaw no need ever to eliminate the dual set of attendance zones. There was evidence that at least some members of the school board had not considered the significance of the problem and the eventual requirement that dual zoning be abolished.

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[177] Id., citing Augustus v. Board of Public Instruction, 306 F.2d 862 (5th Cir. 1962); Bush v. Orleans Parish School Board, 308 F.2d 491 (5th Cir. 1962).

[178] Ross v. Dyer, supra note 170 at 195.

It was contemplated by the school authorities at one time that dual zoning would have to be eliminated under any plan of desegregation, and prior to the 1960 desegregation order about 2 years were devoted to formulating a unitary system of attendance zones for the elementary schools. Although this plan has never been presented to the board, it would seem a reasonable solution and would perhaps result in less actual mixing of the races than is possible under the existing plan of desegregation which allows all Negro students in the desegregated grades to attend a white school if they choose.

In August 1960, it was announced that under the tentative unitary zoning system no more than 400 Negro first-grade students would attend white schools. Since that time 7 new Negro elementary schools and 9 new white elementary schools have been opened. The possibility that the dual set of attendance districts will ultimately be eliminated seems to have been considered in connection with the location of new schools in the city, and the impact of such a step in 1963, when more Negro residential areas are provided with their own elementary schools, would probably be even less than in 1960.

## INEQUALITIES IN FACILITIES AND PROGRAMS

Within the past few years the Houston school district has made progress toward eliminating inequalities between its white and Negro schools. Although in 1955 there was a classroom shortage throughout the school system, it was more acute in the Negro schools, particularly at the elementary level, where 54.6 percent of the Negro classrooms were in temporary buildings as compared to 23.7 percent of the white classrooms. Other facilities, such as kindergartens, visual education rooms, workrooms, libraries, swimming pools, athletic fields, and playgrounds, were also inferior in the Negro schools at that time. Pupil-teacher ratios were higher at all levels in Negro classes than in white classes. Whereas one-third of the junior high school Negro students and over one-half of the senior high school Negro students attended combined junior-senior high schools, there were no such combined schools for whites.

Since 1958, the shortage of classrooms has been relieved by the opening of 12 additional elementary, 7 junior high and 2 senior high schools for Negro students; and 20 new elementary, 5 new junior high and 4 new senior high schools for white students. Other facilities have been expanded and improved in the Negro schools, and pupil-teacher ratios have been reduced. In 1963, there were only two Negro combination junior-senior high schools, and one combination school for whites.

Despite these improvements, there are still some obvious inequalities between educational facilities and training provided for white students and those available to Negroes. Older white schools have in some instances been inherited by Negro students as the racial composition of areas of the city has changed from white to Negro, and their maintenance and repair have sometimes been shamefully neglected.[179] The most serious complaint, however, has concerned the inequality of vocational training offered to Negroes as compared to whites in the Houston public schools.

Vocational Education.—The district's high school vocational training program includes courses in agriculture, distributive education, and trade and industry. In the 1962-63 academic year, some vocational courses were offered at several schools, both white and Negro, but there was a difference in the type and level of courses available to white and Negro students. Programs in agriculture and distributive education similar to those provided at white schools were offered in at least one Negro high school; however, of approximately 12 trade and industrial courses available to white students, only 4 were offered at a Negro school.[180] Furthermore, highly-developed 3-year programs were provided in most trade and industrial courses at San Jacinto High School, which is open to any white high school student in the district desiring to take a 3-year course, whereas only 2-year programs, in the few comparable vocational courses available to Negroes, were offered in the Negro schools. Three courses in fields of traditional Negro employment--commercial cooking and baking, trade dressmaking, and dry cleaning and pressing--were offered only at Negro schools.

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[179] See Houston Post, Jan. 26, 1963, sec. 3, p. 1, describing the condition of disrepair and filth at Miller Junior High School, which was converted from a white to a Negro school in 1956.

[180] Available to both white and Negro students were automotive mechanics, radio and television repair, cosmetology, and general metals. Available only to white students were commercial art, drafting, machine shop, photography, printing, refrigeration and air conditioning, welding, and vocational nursing.

In reply to complaints of these inequities in the high school programs, school administrative officials explained that, in order to obtain State financial aid and accreditation for vocational training courses, the district must justify the need for such courses to the Texas Education Agency. The need for individual courses is determined by such factors as the number of persons employed in the city in the particular occupation involved, an estimate of the future employment prospects in the occupation, and the number of students who have expressed a desire to take the course and who would be expected to enroll if the course were offered. Since, under existing employment patterns and practices, Negro opportunities in many occupations are limited, it is asserted that it is impossible to justify training Negro students for those occupations.

In addition to the high school program, the Houston school district also provides adult education courses and vocational extension courses, and participates in apprenticeship programs. Adult education programs, which are offered at two white and four Negro high schools, and include academic courses in all high school grades, may be taken for credit toward a high school diploma. Full-time preclinical training for licensed vocational nursing is given at one white high school and one Negro high school. The number of white and Negro students in this program is determined by the hospitals which provide clinical training, the ratio being about 3.5 whites to 1.0 Negroes.

Under the extension program, vocational courses are provided in a number of crafts to give an already proficient craftsman additional training in his field. Since some of the crafts are represented by unions which exclude Negroes, and since the courses are available only to persons who are already working in the field in which they wish additional training, Negroes are in effect prevented from participating in this program. These courses are given at San Jacinto High School. Only one course--boiler operation for public school custodians--is provided for Negroes and it is given at a Negro school. It appears that additional courses would be made available for Negroes if a sufficient number of qualified persons indicated a desire for them, but it is not economically feasible to provide a vocational course for a class of less than 12, and Negroes are not admitted to the classes provided for whites.

Apprenticeship programs are carried on by joint management-labor committees of various crafts, which either select the individual apprentices or establish requirements for their selection. The Houston school district participates in most of these programs by providing formal training at San Jacinto High School. No apprenticeship programs are carried on in any of the Negro schools, and it is reported that no Negro apprentices have applied for admission to a program, perhaps because no Negroes are apprenticed in the crafts involved. The director of vocational and adult education has stated, however, that the school district would provide training for almost any number of Negro apprentices, but courses for Negroes would be separate from those for whites.

In response to renewed complaints of the inadequacy of the high school vocational training program offered to Negro students, the school board in March 1963 approved the addition of facilities for vocational courses at two Negro high schools, and it is expected that all vocational courses offered to white students, with a few possible exceptions, will be available in at least one Negro high school in September 1963. It is not likely, however, that the level of the programs in the Negro school will be comparable to the advanced 3-year programs which are available at San Jacinto High School.

Despite this action by the board, on May 7, 1963, a motion for injunctive relief was filed with the Federal district court in Houston having jurisdiction of the original desegregation action, to compel the school authorities to admit Negro students to vocational schools offering courses not available at the Negro schools. The motion was directed primarily at San Jacinto High School, and alleged the denial of admission to that school of a Negro who had earlier sought to enroll. In answer to the motion, it was alleged on behalf of the school board that the courses specified in the motion as not available to Negroes were either already offered or would be offered at a Negro high school upon the opening of the schools in September 1963, and further that courses which were not offered at either a white school or a Negro school could be made available upon the request of at least six students. It was further alleged that the Negro student who had been denied admission to San Jacinto High School had not sought enrollment in the high school program, but had inquired into the preclinical vocational nursing program for adults, which was offered at one of the Negro high schools.

The motion for a temporary restraining order was heard on May 20, 1963, but no action had been taken by the Federal district court at the time of this writing. However, the school board has taken another step to meet Negro complaints. At a special meeting held July 2, 1963, the board adopted a resolution opening all-white San Jacinto High School to any Negro vocational education student from the 9th through the 12th grade who cannot obtain the vocational training he desires in a Negro school.[181] It appears doubtful that many Negro students, if any, will seek or qualify for admission to the white high school under this new policy, since, it is believed, only two courses offered at that school, a special printing course and high school vocational nursing, were not available at a Negro school in September 1963. However, the policy would seem to allow Negro students to take advantage at San Jacinto of the advanced 3-year programs not available in a Negro school.

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[181] See Houston Chronicle, July 3, 1963, sec. 1, p. 9.

# Conclusion

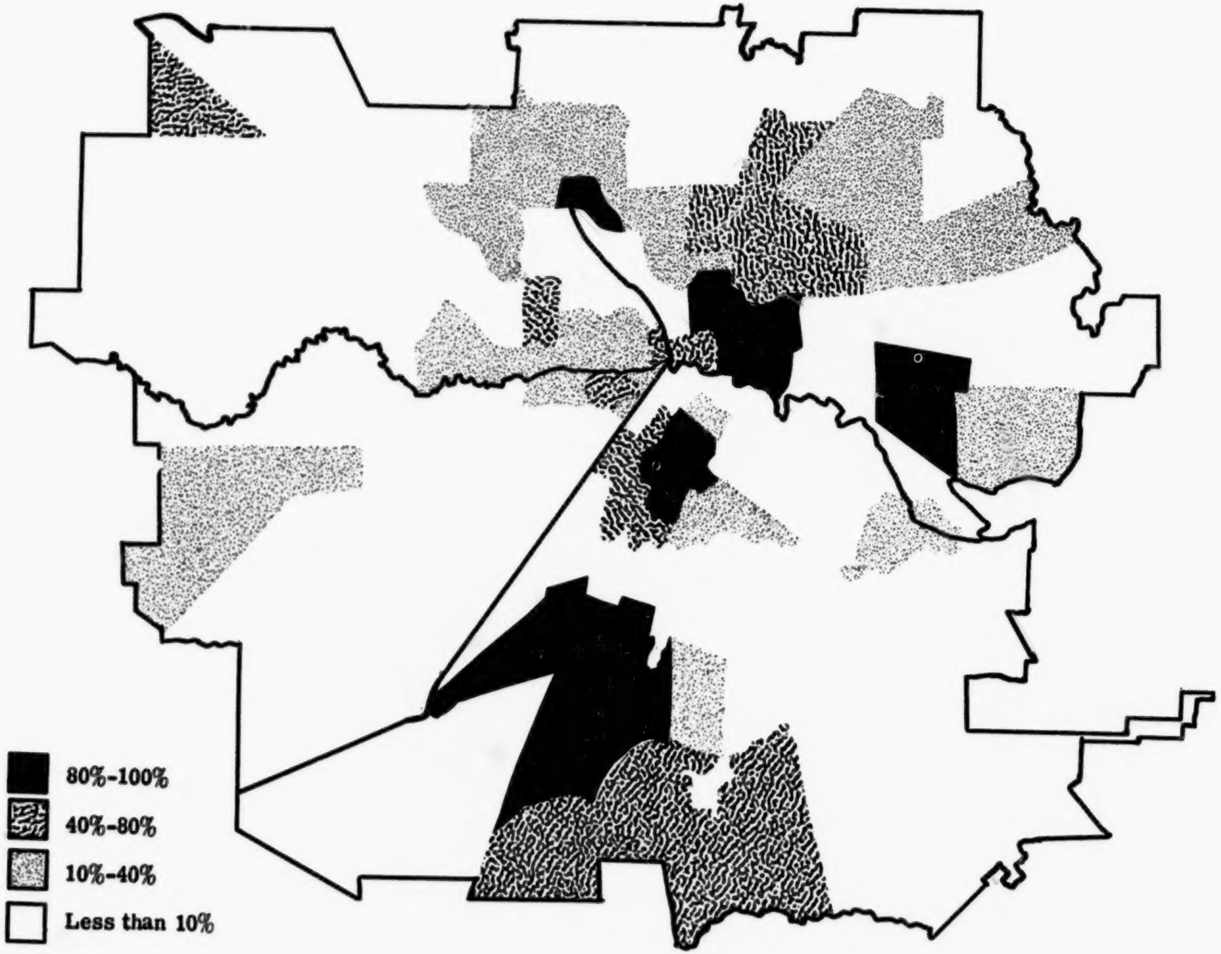
Houston took the difficult first step toward the elimination of racial segregation in its public schools with ease. The pace of desegregation in the 3 years since that step was taken, however, can hardly be regarded as more than "tokenism." Members of the school board and school administrators, undoubtedly influenced by political considerations, have steadfastly held to a policy of containment or "controlled" desegregation, and have yielded only under the pressure or threat of litigation.

There has been a noticeable lack of effective Negro leadership in the struggle for nondiscriminatory education, and some Negro leaders have expressed general satisfaction with the progress which has been made.

Even the elimination of separate attendance zones for the white and Negro schools, which is inevitable, will not result in substantial desegregation. By building schools in the Negro residential areas, the school authorities have satisfied the desires of many Negroes who favor retaining the neighborhood school, and at the same time have increased the city's capacity to contain desegregation under unitary zoning.

Although many demands stemming from the tangible inequality of Negro schools have been met, the inherent inequalities of segregated education remain for most of Houston's Negro pupils. It is doubtful that segregation in the public schools can be completely eliminated as long as the complex problems of discrimination in housing and employment remain unresolved.

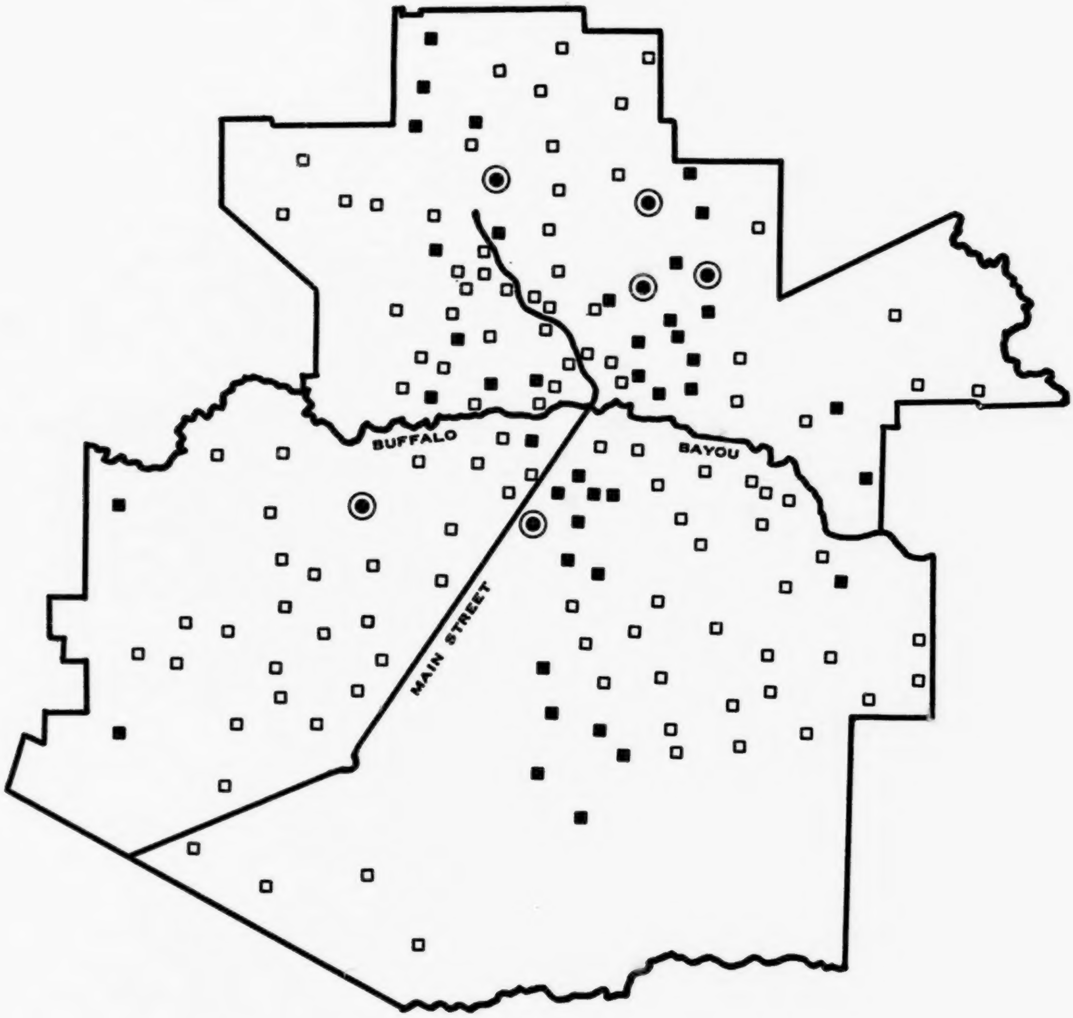
MAP 1


80%-100%
40%-80%
10%-40%
Less than 10%

Source: U.S. Census of Population, 1960

NEGRO RESIDENTIAL PATTERN IN HOUSTON INCORPORATED AREA

## MAP 2



**HOUSTON INDEPENDENT SCHOOL DISTRICT**
**LOCATION OF ELEMENTARY SCHOOLS, SEPTEMBER 1962**

- □ WHITE ELEMENTARY SCHOOLS
- ■ NEGRO ELEMENTARY SCHOOLS
- ◉ WHITE ELEMENTARY SCHOOLS WITH ONE OR MORE NEGRO PUPILS

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